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Current Topics.

Official Referees.

THE announcement that His Majesty has been pleased to declare that the Official Referees of the Supreme Court shall each be called, known, and addressed by the style and title of "His Honour" before his name, and shall have place and precedence next after Knights Bachelor, is a well-deserved recognition of the important service rendered by these functionaries in the work which falls to them. The office of Official Referee, it may be recalled, was created in 1873 for the purpose of dealing with cases which involved a prolonged investigation of accounts or where enquiries of a very technical nature were necessary. It need hardly be said that their work is extremely valuable, but at the same time it is the reverse of spectacular, and on that account is little known even by those who are regular habitués of the courts. It is, therefore, all the more gratifying that their unostentatious labours have been recognised in the way they have been by His Majesty. Their new title places them on a level in this respect with the county court judges, and, curiously enough, it is the same as that which in former days was given to the Master of the Rolls.

Clients' Gratitude.

IN the interesting report of The Law Society on Poor Persons' Procedure, referred to at p. 81 of last week's issue, mention is made of the judges' gratitude for the excellent service rendered by solicitors in the conduct of cases for those who for financial reasons would otherwise have been unable to have their cases presented to the court. One wonders, however, how many of those reaping the advantage of this gratuitous service have expressed their appreciation of the work that has been done on their behalf. Some, no doubt, may have recognised it by their thanks, but it is to be feared that in the majority of cases the service has been accepted as a matter of course. In the days long anterior to the institution of the Poor Persons' Procedure it sometimes happened that a client expressed his gratitude for what his legal advisers had done for him, and occasionally this took curious forms. In an interesting talk last week on "Criminals I have known," Sir CHARTRES BIRON mentioned that he was left a legacy by a murderer whom he had defended, the legacy taking the form of all the money standing to the credit of the defendant's account. Readers of the "Life of Sir Walter Scott" may recall that on his first circuit Scott had the satisfaction of helping a veteran poacher to escape through the meshes of the law. "You're a lucky scoundrel," Scott whispered to his client when the verdict was announced. "I'm just o' your mind," quoth the desperado, "and I'll send you a maukin [i.e., a hare] the morn man." In the "Life of Sir Frank Lockwood" we are told that after the vigorous but unsuccessful defence by that distinguished advocate of Charles Peace, the latter sent from his cell a special message thanking Lockwood for his exertions and at the same time begging his acceptance of the ring which accompanied the message. Lockwood accepted the proffered gift, which apparently bore a suspicious resemblance to what is known as a "knuckle-duster," but it is added that when the recipient of the gift took it home Mrs. Lockwood would have none of it and refused it shelter even for a night! Still, there was the outward expression of gratitude by the client for the services of his counsel.

"*Corruptio Optimi* . . . "

THE desirability of perfect confidence between solicitor and client which has always been a mark of that relationship has, if anything, increased in modern times, when the complexity of the law in relation to existing conditions not infrequently prevents the latter from fully appreciating the issues involved in some matter upon which advice is sought. Instances of malpractices by solicitors which, though proportionately infinitesimal, are unfortunately far from unknown, cannot—and apart from the serious injuries sustained by the individual clients—be too strongly deprecated as calculated to undermine that confidence in the popular mind by casting an unjustifiable slur upon the standards of professional integrity; and their existence must be one of the most anxious problems confronting The Law Society. Readers will welcome the announcement recently made by the President of that body, Mr. F. E. G. SMITH, that the Council was calling a meeting on Thursday, 24th February, at which members would be welcome, to discuss the question of fraudulent solicitors and the ways and means of preventing them. Mr. SMITH indicated that he would be authorised by the Council to put before the meeting all the considerations upon which for years past they had deliberated as a means of putting an end to these terrible cases. "I assure you," he said, "that if the cutting off of my right hand could do anything to stop these fearful malpractices, you should have my right hand in five minutes. But we are up against serious difficulties. I do not say they may not be overcome by the

goodwill of the profession, and I am hoping to get that goodwill, but I ask you to-day not to discuss in the presence of the Press what we have all very much at heart." That solicitors would be willing to co-operate in effective measures to put an end to these malpractices which disfigure the profession need hardly be emphasised, and it is much to be hoped that, notwithstanding the inherent difficulties of the situation, some practical course of action may be the outcome of the meeting. The foregoing was one of the matters raised at the special meeting of The Law Society held on 28th January, a report of which appears on p. 115 of the present issue.

Money Resolutions.

HAVING alluded some months ago in these columns to difficulties experienced in recent years in regard to money resolutions and to certain of the remedies proposed by a Select Committee appointed to deal with the matter, it is fitting that brief reference should be made to the resolution adopted by the House of Commons on Tuesday. It may be remembered that the Select Committee advocated the passing of a declaratory resolution by the House to the effect that financial resolutions in future must be on wider lines than hitherto so as to allow discussion on subsequent stages of the Bill in which they were incorporated. This course has not commended itself to the Government, which put forward the following procedure as an alternative. This takes the form of a Standing Order to the effect that a Bill (other than a Bill which is required to originate in Committee of Ways and Means), the main object of which is the creation of a public charge, may either be presented, or brought in upon an Order of the House, by a Minister of the Crown, and, in the case of a Bill so presented or brought in, the creation of the charge shall not require to be authorised by a Committee of the whole House until the Bill has been read a second time, and after the charge has been so authorised the Bill shall be proceeded with in the same manner as a Bill which involves a charge that is subsidiary to its main purpose. Mr. CHAMBERLAIN, in moving the resolution that the foregoing should become a Standing Order—a resolution which was supported in all quarters of the House—recalled his statement made last November that the Government proposed to accept the Select Committee's recommendation that Money Resolutions in connection with such Bills might be taken after the Second Reading, and intimated that the change would avoid not only the technical and sometimes difficult distinction between Bills mainly concerned with public expenditure and those in which public expenditure is only subsidiary, but also waste of time occasioned by the duplication of debates.

Population Statistics.

THE Population (Statistics) Bill emerged from the Committee stage in the House of Commons on Tuesday a very different measure from that originally presented to the House. As one member happily phrased it, there was nothing left of the old dog except the collar round its neck. The expedient of setting out in the Bill itself the questions to be put in order to obtain the information desired for statistical purposes on the registration of births or deaths has not been resorted to, but the objectionably wide terms of the original schedule have been excised and the scope of inquiry has been limited to a number of simple matters. Moreover, the particulars are required to be given by the person whose duty it is to give information under the Registration Acts, and such a person is required to give information only concerning facts within his or her knowledge. If such a person has not the knowledge, a statement to that effect will relieve him from any obligation in the matter. According to the redrafted schedule the information required on the registration of a birth or still-birth relates to the age of the mother, the date of the marriage, and the number of the children and of the survivors of the existing or any earlier marriage. On death the particulars relate to the age of the surviving spouse (if any); in the case of a man as to whether he has been or was at the date of his death married; and in the case of a woman, to the date, duration and the number of children of any marriage. The information to be furnished is to be secret and privileged; and an amendment to the clause relating to penalties, moved by the Attorney-General, provides that no information obtained by virtue of the measure shall be disclosed except for the performance by any person of his functions thereunder; and that the penalties for contravention shall be, on summary conviction, imprisonment not exceeding three months, or a fine not exceeding £50, or both, or, on conviction on indictment, imprisonment not exceeding two years, or a fine not exceeding £100, or both. The date from which the particulars are required to be furnished has been fixed on 1st July of the present year and the measure is to continue in force until 30th June, 1948.

Motorways.

THERE appears to be much to be said for the suggestion put forward in the report recently presented to the Minister of Transport by the German Road Delegation in favour of specially constructed highways for the exclusive use of motor vehicles. This would involve some modification of the present legal notion—which has indeed been somewhat invaded by the banning of horse traffic in certain streets—that of the various kinds of public way (highway, driftway, bridlepath and footpath) the greater invariably includes the less, but a characteristic of English law has always been adaptability with reference to new conditions and there would be no insuperable objection on these grounds. Two advantages from the viewpoint of road safety may be urged in favour of the plan. First, the new roads would be planned for speed, and the dangers arising from the use of existing highways in a manner for which they were not originally intended and for which, in many instances, they are incapable of being adapted, would be obviated; secondly, the present roads would be largely relieved of their present burdens, and their user could be the more readily restricted; for if motorists were given ample opportunities of utilising the potentialities of their machines elsewhere they might be more amenable to the imposition of suitable speed limits along roads unsuitable for fast travelling. Whether the latter would be the case or not, the authorities would certainly be in a better position to impose and enforce such speed limits as in the interests of safety proved to be desirable. Moreover, a system of motor roads linking up the chief centres of population might well have a favourable effect upon the preservation of what are commonly called the amenities. Country roads relieved of much of their existing burden might recover something of their former charm, villages and towns would be rid of the nuisance of through traffic, while the new routes themselves cleaving their way through open country would not necessarily be unsightly.

The Children and Young Persons Act, 1933.

THE fifth report on the work of the Children's Branch of the Home Office, recently published by H.M. Stationery Office, price 2s. 6d. net., is largely occupied with the changes effected by the Children and Young Persons Act, 1933, which is the principal event in this branch of activity since the publication of the last report ten years ago. It is indicated that the preparation of the measure fully occupied the branch before it passed into law, and that since the Act came into operation, on 1st November, 1933, there has been heavy additional work in dealing with the new problems to which it has given rise. "These problems," it is said, "are not all solved, nor will there be an end to them till there is an end to the vagaries of human conduct," but the Act has, it is thought, been in force long enough to justify an attempt to take stock of the present position. One of its effects has been to bring the Home Office into closer contact with

the education authorities, and it is stated that the help which so many of these are now giving has served to make it clear that they are as much concerned about the welfare of the delinquent or neglected children in their districts as about other children. One point which is stressed is the elasticity of the provisions of the Act—a fact which is regarded as of prime importance. "It is convenient on occasion," the report states, "to speak of delinquents in bulk, but delinquents cannot be treated in bulk. The Juvenile Courts are dealing with individual boys and girls as different from one another in character and temperament as are the justices before whom they appear, and the final test of the success of the Act will be whether it is effective in saving those boys and girls from a life of crime or disorder and turning them into decent members of society."

Results Achieved.

THE report emphasises the fact that the measure of success which is attending the working of the Act can only be judged with certainty after a period of years, when it will be possible to determine the extent to which the amount of adult crime declines; but it is suggested that the fact that the amount of adult crime in relation to the population during the last fourteen years or so is either stationary, or has declined, points to the conclusion that the treatment of boy and girl offenders in the recent past has been on the right lines, and that it may reasonably be expected that the treatment applied under the new Act to the children of to-day will result in a further diminution of adult crime in the future. Brief mention should be made of two points dealt with in the report with reference to the composition of the bench when dealing with juvenile offences. The system of forming Juvenile Court Panels of justices specially qualified for dealing with juvenile cases has been extensively adopted. A year ago there were 987 such panels, consisting of 6,508 men and 2,068 women justices. There were 66 panels, nearly all in districts where the volume of work was small, not including among the constituents a woman justice and the hope is expressed that this will be remedied in the near future. The second point relates to the age of justices, particulars of which the clerks to justices were invited to include in their returns. This task has proved in certain cases to have been one of some difficulty. Some justices (or their clerks), it is stated, exhibited a reluctance, shy, indignant, or coy, in disclosing (or obtaining) the desired particulars, and one may be permitted to sympathise with the clerk who returned the ages of the men justices but begged to be excused the delicate task of asking the women justices their ages. The returns furnished, which relate to 7,005 justices, men and women, show 2,650 justices in the sixties, 2,076 in the fifties, 1,284 in the seventies, 865 under fifty, and 130 over eighty. The report, while properly sceptical concerning the efforts of the unqualified, exhibits due appreciation of the value of skilled psychological observation.

Recent Decisions.

IN *Poulden* v. *Poulden* (*The Times*, 28th January), BUCKNILL, J., considered s. 4 of the Matrimonial Causes Act, 1937, with reference to connivance, and, not being satisfied that the petitioner for a dissolution of his marriage had not, through his agent, been accessory to or connived at the adultery of his wife, dismissed the petition. As to connivance through an agent, see *Gower* v. *Gower*, L.R. 2 P.D. 428, per LORD PENZANCE.

In *Phillips* v. *William Whiteley, Ltd.* (*The Times*, 29th January), GODDARD, J., dismissed the plaintiff's claim for damages for personal injuries which had been sustained by the infection of the wound made in piercing her ears and which the plaintiff alleged were due to the negligence of the jewellers or their servant in not taking due precautions with regard to the cleanliness of the conditions in which the operation was performed. In view of the possibility of an appeal the learned judge intimated that he would have awarded the plaintiff £200 damages and £72 10s. special damages if he had decided the case in her favour.

In *Peters* v. *Gee, Walker and Slater, Ltd.* (*The Times*, 29th January), SIMONDS, J., continued until the trial of the action an *ex parte* injunction granted to the plaintiffs to restrain the use of concrete-mixers by the defendants in clearing the Adelphi site except between the hours of 8 a.m. and 7 p.m., and declined to allow the noise of pneumatic drills and picks to go on except during hours already limited (between 8 p.m. and 9 a.m., 12.30 p.m. and 2 p.m., and 6 p.m. and 7 p.m.). The learned judge declined to grant an injunction to restrain the employment of the pile-driving system and ordered that the costs should be the costs in the action.

IN *Commissioners of Inland Revenue* v. *Paget; Paget* v. *Commissioners of Inland Revenue* (*The Times*, 1st February), the Court of Appeal (Sir WILFRID GREENE, M.R., LORD ROMER and MACKINNON, L.J.) upheld a decision of FINLAY, J. (81 SOL. J. 786), to the effect that the proceeds of sale of coupons of 4½ per cent. Budapest Bonds and of the coupons of 7 per cent. bonds of the Kingdom of Yugoslavia were not to be included in the holder's return of total income for the purposes of surtax. Interest had been suspended on the bonds, alternative methods of discharging the obligation, under which the holder had not received any payments, being substituted.

In *Cross* v. *London and Provincial Trust, Ltd.* (*The Times*, 1st February), the Court of Appeal (Sir WILFRID GREENE, M.R., LORD ROMER and MACKINNON, L.J.) upheld a decision of FINLAY, J. (81 SOL. J. 787), to the effect that the proceeds of sale of certain funding bonds did not constitute income arising to the respondent company from foreign securities within Case IV of Sched. D. of the Income Tax Act, 1918. The funding bonds were issued by the United States of Brazil on suspension of payment of interest on bonds described as "Six and a half per cent. External Sinking Fund Gold Bonds of 1926," and were received by the company on surrender of the coupons of its 1926 bonds when they were admittedly of marketable value.

In *The Stranna* (p. 112 of this issue), the Court of Appeal (GREER, SLESSER and SCOTT, L.JJ.) upheld a decision of LANGTON, J., to the effect that the portion of a shipment of cargo which the defendants had failed to deliver owing to loss while loading, had been lost by a peril of the sea, and that the defendants were accordingly protected by exceptions in the bills of lading.

In *Twort* v. *The King* (*The Times*, 2nd February) a claim on petition of right by the suppliant for a declaration to the effect that he was entitled to receive a grant of £600 a year from the Medical Research Council so long as he remained the superintendent and/or director of the Brown Institution, University of London, and so long as he devoted nearly the whole of his time to research work, failed, GODDARD, J., intimating that the proceedings were obviously misconceived and that if the suppliant had any cause of action it was against the Medical Research Council.

In *Bank of Athens Soc. Anon., etc.* v. *Royal Exchange Assurance* (p. 114 of this issue), BRANSON, J., held that the discretionary power of the court to award interest conferred by s. 3 (1) of the Law Reform (Miscellaneous Provisions) Act, 1934, was not limited to cases arising after the Act came into force; that the defendants were entitled to interest on the sum of £180 since it had been in the hands of the plaintiffs, who were innocent mortgagees, the amount having been paid over under an insurance policy relating to a ship which on subsequent proceedings for recovery had been held to have been deliberately cast away with the connivance of the owner; and that the appropriate rate of interest was 4 per cent.

The Hire-purchase Bill.

THE system of hire-purchase, as was remarked in a "Current Topic" on the subject shortly after the second reading of the Hire-Purchase Bill, on 10th December (81 SOL. J. 1029), has undoubtedly brought abuses in its train. It is the purpose of this article to examine as briefly as possible "the old law, the mischief and the remedy," and to attempt to offer a few constructive criticisms of certain features of the measure as it stands at present.

The Bill deals with abuses in connection with both hire-purchase agreements and credit sale agreements. It is proposed to apply it (cl. 1) only to agreements where the total price does not exceed £50 in the case of an agreement affecting only one article, and £100 in any other case. This clause no doubt, has the well-intentioned object of protecting the poor, but in fact the poor would be equally well protected without it. Its only actual effect is to leave the firms who sell larger quantities, i.e., the bigger hire-purchase concerns, free to indulge in all the abuses which the Bill seeks to prevent. Practitioners in the courts are well aware that abuses are by no means confined to the small trader, and the bigger firms are not free from guilt.

Clause 2 (1) and (2) needs careful consideration. It provides that the offeror of goods for hire-purchase must declare in writing or by ticketing the goods to every hirer the price at which the goods may then be purchased for cash, and every hire-purchase agreement shall contain, as well as a list of the goods comprised therein, a statement of the cash price and of the hire-purchase price. Clause 3 (1) and (2) repeats these provisions in relation to credit sale agreements. The object of this clause is obvious and laudable, but it should be remembered that the price asked in the case of a cash sale is not necessarily always the price obtained, and in the case of articles which are not the subject of price maintenance agreements, both the trader and the customer prize their right of free bargaining, into which this provision seems to cut. It seems all the more unfair in view of sub-cl. (4), which excludes all right of action unless the preceding sub-clauses have been complied with, except where the non-compliance is honest and inadvertent and the hirer is not prejudiced. The right of free bargaining might be more clearly safeguarded in express language.

The provision that no action shall be maintainable on the agreement unless it is in writing signed by the hirer or the purchaser is salutary and cannot be criticised, except that it is difficult to understand why hire-purchase agreements for a price of over £20 should be capable of being signed on behalf of the hirer, while on the other hand, all credit sale agreements (except those for goods of the value of £5 or under) must be signed by the purchaser personally.

The amount which should be paid by the hirer in case he or the guarantor terminates his agreement, is a matter which must have given considerable difficulty to the framers of the Bill. A clause giving the hirer power at any time to determine the hiring is almost invariably inserted in a hire-purchase agreement, because otherwise the agreement might be construed as one binding the hirer to purchase the goods, and it might thus give him the right, as a person who has agreed to buy the goods, to transfer a valid title to a purchaser from him, under s. 9 of the Factors Act, 1889. The Bill (cl. 4) expressly provides that a hirer or guarantor shall be entitled at any time during the currency of the hiring agreement to terminate the hiring by delivering up the goods in as good a state of repair as at the time of their delivery to the hirer, due allowance being made for reasonable wear and tear. Hire-purchase agreements usually provide that in that event the hirer shall pay all hire rent due and unpaid at the time of re-delivery, and in addition a sum representing compensation for depreciation of the goods and the cost of carriage. As such termination is not breach of the contract, the equitable rule that liquidated damages must be a genuine pre-estimate of the damage, or otherwise will be a penalty and irrecoverable, does not apply. It was therefore necessary to legislate to protect the hirer from the unscrupulous trader who inserts a heavy depreciation clause and takes every possible opportunity of enforcing it. (It should be added here in parenthesis that there are many traders who find it possible to survive without ever resorting to the depreciation clause in their agreements.) Clause 4 provides that the hirer shall pay in addition to arrears due and owing the amount by which the sums already paid fall short of (*a*) in cases where the hire-purchase price is less than £50, one-third of such hire-purchase price; (*b*) in cases where the hire-purchase price is £50 or more, one-half of such hire-purchase price; or (*c*) any less sum specified in the hire-purchase agreement. What the Bill does is to set a maximum beyond which the depreciation sum shall not go. In view of the fact that depreciation varies so considerably according to the class of article sold, this maximum sum will have to be carefully considered and possibly amended in committee stage. It might be equally satisfactory to deal with the matter by giving judges a discretionary power to decide whether a depreciation clause is harsh and unconscionable, and providing that all clauses so found shall be void. It is worth noting that the Bill (cl. 8) makes "contracting out" of cl. 4 impossible, as no action can be maintained by an owner on any agreement which does not state clearly that (*a*) the hirer has the right to terminate the hiring and to return the goods comprised therein upon the terms set out in cl. 4; and (*b*) after one-third of the hire-purchase price is paid the hirer has the right to apply to the court for relief within seven days of any notice being served on him for breach of the agreement or of the intention of the owner to repossess the goods comprised therein or any of them.

Little, if any, criticism can be offered of the remaining provisions of the Bill. Stipulations exempting the owner from liability for wrongful entry or wrongful seizure or treating the agent of the owner as the agent of the purchaser in connection with the formation or the conclusion of the contract are to be void (cl. 5). Copies of the agreement are to be supplied to the hirer (cl. 6) and where succeeding agreements are made the owner cannot seize goods comprised in the earlier agreement if the whole of the earlier account is paid off, as an agreement purporting to comprise goods contained in an earlier agreement is declared by the Bill to be void (cl. 9 (1)). Seven days' grace is to be given by notice to a hirer or guarantor to remedy a breach of contract before a right to seize can be exercised if a third of the hire-purchase price has been paid (cl. 11). From and after the service of a notice under cl. 11 the goods are to be deemed to be included in the goods referred to in s. 1 (*c*) of the Law of Distress (Amendment) Act, 1908, and such inclusion is to continue for fourteen days after service of the notice or until after fulfilment, discharge or rescission of an order of the court on an application under cl. 12 or 13.

The hirer may apply to the court during those seven days for relief, and if after that time he has not applied and he refuses to deliver up the goods the owner may get a court order for delivery up of the goods (cls. 12 and 13). Guarantors must be served with copies of notices under cl. 11, and an owner can make a guarantor a party to an application by a hirer for relief, and then any order against the hirer is to be an order also against the guarantor (cl. 17). After service of notice under cl. 11 the goods cease to be goods in the possession and disposition of the hirer with the consent of the true owner within s. 38 (*c*) of the Bankruptcy Act, 1914 (cl. 18). Clause 11 does not apply where the hirer fails to comply with a provision requiring him to insure the goods and keep them insured (cl. 19).

There is, finally, cl. 7, to which practitioners in the courts can give their unqualified approval and blessing. It provides

for an implied warranty of quiet possession and freedom from incumbrance and of a right on the part of the owner to sell the goods at the time when the property is to pass. In view of the recent decision in *Mercantile Union Guarantee Corpn.* v. *Wheatley* [1938] W.N. 11, the wording of the implied warranty as to right to sell may require re-consideration. There is also an implied condition of fitness for the purpose required, in the same words (*mutatis mutandis*) as in s. 14 (1) of the Sale of Goods Act, 1893. Under the present law there is merely an implied *warranty* of fitness (Halsbury, "Laws of England" (1931), vol. 1, p. 757, and see article on this at 80 SOL. J. 4), and a consequent claim for damage for breach, but no right to return the goods. These warranties and conditions are to apply notwithstanding any agreement to the contrary.

Fundamentally, the measure is sound, subject to the above few criticisms. One cannot help feeling, however, that the provisions in the Bill, particularly of cl. 1, which limit its operation to the smaller transactions, may inflict unnecessary hardships upon the small trader with corresponding (and may-be undeserved) advantages to the larger concern. The smaller trade is frequently conducted just as honestly and fairly as some of the larger hire-purchase work, and such provisions as tend to limit the operation of the Bill to the smaller work have as little justification as any attempt to limit the laws relating to money-lending to the smaller money-lenders and leave the larger companies untouched. When this flaw in the Bill is removed it is to be hoped that no obstacle will be put in the way of its smooth passage.

Company Law and Practice.

Fraudulent Preference.

THE recent bankruptcy case relating to fraudulent preference, *Re Conley*, which has recently been reported in 150 L.T. 26, is not only of interest in connection with bankruptcy law, but also in connection with company law, for by s. 265 of the Companies Act, it is provided that any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property which if made or done by or against an individual be deemed in his bankruptcy a fraudulent preference, shall if made or done by or against a company be deemed in the event of its being wound up a fraudulent preference of its creditors, and be invalid accordingly. Consequently questions as to what is and what is not a fraudulent preference in bankruptcy are exactly in point in considering that question in the case of a company in liquidation.

The case of *Re Conley*, *supra*, was concerned with the provisions of sub-s. (1) of s. 44 of the Bankruptcy Act of 1914. This sub-section provides that every conveyance or transfer of property or charge thereon made, every payment made, every obligation incurred and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor or of any person in trust for any creditor with a view to giving such creditor or any surety or guarantor for the debt due to such creditor a preference over the other creditors shall, if the person making, taking, paying or suffering the same is adjudged bankrupt on a petition within three months thereafter, be deemed fraudulent and void as against the trustee in bankruptcy. The provisions of this section are almost identical with those of s. 45 of the Bankruptcy Act of 1883, except for the inclusion in the 1914 Act of the words "or any surety or guarantor for the debt due to such creditor" and it is with the effect of these words that the case I have referred to above deals.

Prior to the Act of 1914 there was some conflict of authority as to what the position was where a bankrupt had paid a creditor with a view to preferring someone who had guaranteed the debt, and no doubt this addition to the section was intended to do away with the effect of the cases *Re Mills*, 5 Mor. 550, and *Re Warren* [1900] 2 Q.B. 138. In the former of these cases it was found as a fact that the intention of the bankrupt in paying off a creditor was not to prefer that creditor but to prevent another person who had become surety for the debtor from having to pay the debt. It was held that as the payment was made not with the intention of preferring the creditor to whom it was made, but with the intention of benefiting another person who was not a creditor, it could not be set aside as a fraudulent preference. In the latter of these two cases it was held that in similar circumstances no relief could be had against the surety whom it was intended to prefer because he was not a creditor: In *Ex parte Read* [1897] 1 Q.B. 122, however, where the facts were similar, a different decision was come to. Vaughan Williams, J., after discussing whether or not a surety for a bankrupt is a creditor within s. 48 of the Bankruptcy Act, 1883, and coming to the conclusion that he is, goes on to say: "I hold therefore that you may make a fraudulent preference by a payment to or for the benefit of a surety who has not yet been called upon to pay as surety." The only interest in that decision now that the law relating to the matter has been changed is to see what relief was given. The trustee was only claiming repayment of the amount paid to the creditor from the surety whom it was intended to prefer, and consequently this must be the order that was made, the judge having found that it was a fraudulent preference. In a subsequent case, *In re Blackpool Motor Car Co.* [1901] 1 Ch. 77, Buckley, J., distinguished *Re Warren* from *Ex parte Read*, but it is not easy to see how he contrived to do this. In any case by the addition to the words of the section in the 1914 Act already referred to this question is excluded, and it is now clear that a payment made to a principal creditor with a view to prefer a surety for that creditor's debt can be set aside as a fraudulent preference. The only question left open is what relief the trustee, or in the case of a company the liquidator, is entitled to; for *Ex parte Read*, as we have seen, shows the surety whom it was intended should be preferred was ordered to repay, or rather to pay since he had never received any payment, the amount which had been paid to the principal creditor, and a similar result was arrived at in the first reported case on the corresponding section of the 1914 Act: *Re G. Stanley & Co., Ltd.* [1925] Ch.1 48. In that case a liquidator had taken out a summons against the guarantor of the company's bank account (1) to have it declared that the payment of certain sums of money by the company into its bank account was a fraudulent preference in favour of the guarantor by relieving him of liability under the guarantee, and (2) for an order directing the guarantor to repay the sums of money to the liquidator. It was held on the facts that the object with which the managing director of the company had repaid the money to the bank was not to prefer the guarantor and that therefore the liquidator must fail. Prior thereto judgment had been given by Eve, J., on a preliminary point raised by the respondent to the summons that in any event no order for repayment could be made against him. This objection was overruled by Eve, J., and at the end of his judgment he says: "At the hearing I was impressed with the argument advanced on behalf of the respondent that the statute only contemplated the setting aside of the payment, but further consideration of the authorities has convinced me that the real object of the amendment to the section was to enable the trustee to recover the payment from the person actually preferred."

This decision was not followed by Clauson, J., in the case of *Re Lyons* which is only reported on appeal in 152 L.T.R. 201. In that case, which was a motion by a trustee for a declaration that payment of a debt to a bank was a fraudulent preference of a guarantor of that debt and for an order for repayment both against the bank and the guarantor, and it was held that

the payment did constitute a fraudulent preference. Clauson, J., made an order for repayment against the bank and made no order against the guarantor who had been preferred. The decision was reversed on another point in the Court of Appeal, and no reasons appear for this order being made rather than an order, similar to that made by Eve, J., in *Re G. Stanley & Co., Ltd., supra.*

In *Re Conley, supra*, the question was whether a payment by the bankrupt of a debt owing to his bank, which was secured by a certain deposit of securities, constituted a fraudulent preference on the ground that it was made with a view to prefer the depositors who as a result of the payment were able to recover their securities. Farwell, J., held that it did not on the ground that a person who deposited securities does not incur any personal liability and so cannot be said to be a security, or guarantor, which words import a personal liability. Before coming to his decision, however, the learned judge had considered the question of the proper relief to be given to the trustee if the payment had, in fact, constituted a fraudulent preference, and his decision on this point apparently had some bearing on his decision referred to above. On the amended section he says: "As a matter of construction of that section, it is in my view reasonably plain that the payment to the creditor constitutes the preference, although there was no intention to prefer that creditor, with the result that the trustee in bankruptcy must recover the amount so paid from the creditor and not from the surety or guarantor." In so holding Farwell, J., followed the decision of Clauson, J., referred to above, rather than that of Eve, J., and he points out that at first sight it would appear that it was a wide departure from the principle that in the case of fraudulent preference the money could only be recovered from the person to whom it was paid, but that it was not really so, as the creditor who has to refund still has his remedy on the guarantee by the person whom it was intended should be preferred. Of course, if a depositor was included in the words "surety or guarantor," such would not be the case, and the guarantor would have to refund and then be left with no remedy against a depositor who had already recovered his security, and some weight was given by the learned judge to this consideration in considering whether or not a depositor was a surety or guarantor.

It seems, therefore, that the decision before the Act of 1914 in *Ex parte Read* and the order made were wrong and that even since that Act the order which was made in that case is not the proper order when a declaration is made that a surety or a guarantor has been fraudulently preferred, and that the relief that a liquidator will get on obtaining such declaration will be for repayment of the sum by the creditor who was actually paid, leaving that creditor to his remedy on the guarantee.

A Conveyancer's Diary.

Clogging the Equity of Redemption—Consolidation of Mortgages.

Last week I dealt with the question of "clogging" the equity of redemption, and I showed how that could not be done. But there was, as I said, an old doctrine of equity which in effect did create a clog upon the equity of redemption, that is the doctrine of consolidation of mortgages. It is difficult to say quite how that doctrine came to be adopted by courts of equity which always seemed to give to a mortgagor who was willing and able to redeem his property very considerable favour. At law a mortgagor who failed to pay the mortgage debt upon the named day (usually six months after the advance) was precluded from recovering his property, even if he proffered payment in full of the principal money advanced with interest and costs, but in the eyes of a court of equity he could always do so, and, if in possession, after any number of years. Nevertheless, the courts of equity of those days adopted the curious doctrine that on the principle that "He who comes into equity must do equity," a mortgagor of one property could not redeem unless he also redeemed other mortgages to the same mortgagee. That undoubtedly created a "clog" on the equity or right to redeem, and was so contrary to the general equitable doctrine applicable to mortgages.

The inconsistency of that right to consolidate was recognised by the legislature in s. 17 of the Conveyancing Act, 1881, and repeated with slight modification in s. 93 of the L.P.A., 1925, which reads:—

"(1) A mortgagor seeking to redeem any one mortgage is entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, solely upon property other than that comprised in the mortgage which he seeks to redeem. "This sub-section applies only if and so far as a contrary intention is not expressed in the mortgage deeds or one of them.

"(2) This section does not apply where all the mortgages were made before the 1st day of January, 1882.

"(3) Save as aforesaid, nothing in this Act, in reference to mortgages, affects any right of consolidation or renders inoperative a stipulation in relation to any mortgage made before or after the commencement of this Act reserving a right to consolidate."

The result of that, of course, is that the equitable doctrine regarding consolidation as it existed before 1882 still applies where that section of the L.P.A., or (as to mortgages created before that Act) s. 71 of the Conveyancing Act, 1881, has been excluded.

The exclusion of these enactments has been and is commonly done in mortgages to a building society and sometimes in other mortgages, and it becomes, therefore, of importance to consider what the doctrine really is and what rules govern the application of it.

In the first place, it is as well to bear in mind that the doctrine is purely and simply an equitable one and can have no application where the legal right to redeem exists. In *Cummins* v. *Fletcher* (1879), 14 Ch. D. 699, which is a leading authority on the subject, James, L.J., put it quite plainly. His lordship said: "The whole doctrine of consolidation, whatever may have been the particular circumstances under which it has been applied to different cases, arises from the power of a court of equity to put its own price upon its own interference as a matter of equitable consideration in favour of any suitor. At law, independently of any legal estate, where the power of redemption given by original contract is gone, then a person comes into equity and asks to redeem upon what are called equitable considerations, and then the court of equity says: 'This is the price upon which we give you the relief you seek, namely, on your paying all that is due.'" The learned lord justice, however, made it quite clear that there could be no consolidation of a mortgage the legal right to redeem which still subsisted with one with regard to which there was only an equitable right to redeem, and in that connection said: "The Court of Chancery had, and this court has, no more right, because there was an insufficient security given for the debt, to take the sufficient security, as to which there has been no default at all, or no occasion to apply to the court of equity, than a man has the right to go and take another man's stock-in-trade or chattels or horses or anything else . . . But it seems to me that where a man has a legal right in property A and an equity of redemption in property B, which is an insufficient security, and has no occasion, and will never have any occasion, to come to a court of equity with respect to property A, the fact of the two properties being subject to two mortgages, gives the court no more power to take from him property A than it has to take any other property belonging to him, for the purpose of sabotaging the debt for which there is an insufficient security."

The first rule, therefore, which cannot be too strongly emphasised, especially in regard to the ordinary building society mortgage, is that there can be no consolidation of a mortgage, where the legal right to redeem subsists, with one where there is only an equitable right.

There are some other rules to which I must briefly refer.

One is that the mortgages must be by the same mortgagor, if consolidation can be claimed. This is exemplified in *Re Reggett* (1880), 16 Ch. D. 117, where it was decided that a mortgage by three partners in a firm could not be consolidated with one made by two only of them. That seems to be so, although the right (that is, the equitable right) to redeem may be in the same persons.

Whilst the mortgages which it is sought to consolidate must have been made by the same mortgagor or mortgagors, it is not necessary that the mortgages should have been, in the first place, to the same mortgagee, provided that at the time when it is desired to enforce the right to consolidate the mortgages have become vested in one mortgagee. It is not, however, possible to consolidate a mortgage made to one person with one made to him and another who are advancing the mortgage money out of a joint account.

It is a question remaining to be decided whether, as the law now stands, and s. 93 of the L.P.A. is excluded, there can be any consolidation where the mortgagee has exercised his power of sale under one of the mortgages. That is, whether he can consolidate the balance held by him after payment off of the amount due in respect of the mortgage under which he has sold, with another mortgage which he still holds. It seems that by virtue of s. 105 of the L.P.A., 1925, the right of the mortgagor to the balance of the purchase price is a legal and not an equitable right, and that the right to consolidate is lost, whatever the contract between the parties may be. But I am not sure about that.

Landlord and Tenant Notebook.

Determination of Lease held by Co-Tenants.

THE grant of a lease to joint tenants or tenants in common is a *modus operandi* which appeals to landlords in some cases, e.g., when the property is to be occupied and used by a "one-man company" and the lessor is not sure whether the man or the company is the more responsible. There are, however, certain disadvantages attendant upon the employment of this device, particularly when questions arise as to the determination of the tenancy and of the legal consequences of such determination.

The correct method of serving notice to quit, in the case of a periodic tenancy granted to more than one person, will not normally give rise to difficulty, for if the point has not been expressly decided the effect of the authorities is that service on one tenant on the premises will suffice. In *Jones d. Griffiths* v. *Marlow* (1791), 4 T.R. 484, the premises were a dwelling-house; notice to quit was handed to the tenant's maidservant at the house; she was not called to say whether she had handed it to her employer, the defendant in the action; and it was held that there was a strong presumption that it had reached him, which presumption had not been rebutted. But, while there was only one tenant, the effect of Lord Kenyon's judgment was such that in *Doe d. Bradford* v. *Watkins* (1806), 7 Ea. 551, counsel for joint tenants saw fit to abandon an objection that only one of them had been served with notice to quit; the one served being resident on the premises, while the other, who was his partner, lived many miles away. The headnote to the case states boldly "Notice to quit served on one of two tenants on the premises, who held under a joint demise, is evidence that the notice reached the other who lived elsewhere."

Before leaving this point, it is as well to mention that Lord Kenyon's judgment in the older case emphasised the fact that the premises were a dwelling-house, and that the tenants in the later case were partners, who are one another's agents; while the four judgments delivered do not as much as mention the abandoning of the objection. At all events, any agreement for a periodic tenancy ought to provide for the mode of service of notices to quit.

And when it comes to a question of the statutory forfeiture notice required in the case of most forfeitures, the landlord may find the result of employing the device disappointing. The position can be ascertained by perusing a recent decision of the Court of Appeal, *Blewett* v. *Blewett* (1926), 2 All E.R. 188, C.A., in which it appeared that property held under a repairing lease had devolved, in consequence of deaths intestate and testate, upon five members of a family. The property consisted of two cottages, and by arrangement one of the brothers lived in one of them rent free in consideration of his agreeing to keep both in repair. The landlord served another brother with notice to repair and soon afterwards issued a summons for possession on the ground of breach of the condition covenant and condition as to repairs. The county court judge thought the notice intrinsically bad and dismissed the action on that ground; in the Court of Appeal the plaintiff would have succeeded if the question of service had not cropped up. It was then held that all the lessees should have been served; and incidentally, as there were more than four of them, the Public Trustee too, by virtue of the provisions subjecting land held in undivided shares to a trust for sale, contained in Part IV of Sched. II to L.P.A., 1925.

It may be noted at this point that a tenant who is one of many may also be at a disadvantage in forfeiture proceedings, for neither for the purpose of service nor for that of applications for relief are joint tenants regarded as Siamese twins. Thus, in *T. M. Fairclough and Sons Ltd* v. *Berliner* [1931] 1 Ch. 60, the unwillingness of one tenant to claim relief against forfeiture for disrepair was fatal in itself to the chances of his partner, whose counsel's invocation of the "trust for sale" provision of L.P.A., 1925, s. 36 (1) did not avail.

A different source of trouble has been the holding over by one or some of several co-tenants. It is a little unfortunate that the efforts made by a landlord named Christy nearly a century ago were not persisted into the bitter end, for the net result of three decisions, *Christy* v. *Tancred, Finlay and Two Others* (1840), 7 M. & W. 127; *Christy* v. *Tancred and Thompson* (1842), 9 M. & W. 438; and *Tancred and Thompson* v. *Christy* (1843), 12 M. & W. 316, leaves us in some doubt.

In the first of the three cases, it appeared that the plaintiff had let premises to all the defendants, who were described as directors of the Trades' Union Bank, for a year from 12th July, 1838. In January and March respectively, the defendants Tancred and Finlay ceased to be directors. In May and June, the remaining directors negotiated for a new lease, but nothing came of the proposals. But not till September did they surrender possession, and the action was brought for use and occupation. It was held that all defendants were liable, the ex-directors being likened to tenants who held over by their under-tenants and were responsible on the principle laid down in *Harding* v. *Crethorne* (1793), 1 Esp. 57.

The facts of the second case were that on the 12th July, 1838, the same landlord let to a number of persons, for a year from 24th June, 1838. The tenants, ten in number, of whom eight signed "articles of agreement" recording the tenancy agreement, were "provisional directors" of the London and Dublin Trades Bank. Both the defendants in the action, Tancred and Thompson, signed these articles; and both had previously been given certificates as shareholders subject to their signing the deed of settlement—which they never did. In January, Tancred retired from this directorship too, but his co-defendant remained in office. The business apparently did not prosper; there was some negotiation

with the plaintiff when the year came to an end, but ultimately possession was given, as was found and held, on the 7th December. The claim was for a quarter's rent unpaid, and for use and occupation since the expiration of the term. The Court's reaction to forceful arguments addressed to them on behalf of Tancred was such that they doubted the correctness of their own decision in the earlier case, for no distinction had there been drawn between the position when holding over is by an under-tenant (as in *Harding* v. *Crethorne*), and holding over by a co-tenant; but, after observing that the decision could be rectified only by proceedings in error, Parke, B., distinguished the facts by pointing out that in this case Tancred had clearly continued to be a partner.

Messrs. Tancred and Thompson took the hint, and the third decision thus came into being. The result was the laying down by Tindal, J., of the following principle: to justify a verdict for the landlord, it must be found that the defendant assented to the holding over. In this case there was no finding that Tancred was in fact a partner in the bank after he had given up his directorship. So a *venire de novo* was ordered by the Exchequer Chamber.

As it is impossible to imagine that further proceedings could have escaped the notice of both Messrs. Meeson and Welsby, it seems safe to assume that the absence of any further report shows that no such proceedings were ever taken. In *Draper* v. *Crofts and Bartlett* (1846), 15 M. & W. 166, however, a co-tenant who had never occupied and never paid rent was held not liable for the other tenant's holding over. But if one examines the position in the light of more recent authority on the question of liability for holding over by third parties, one is driven to the conclusion that the first of the trio of decisions is probably sound. This, though it was indeed unfortunate that Baron Parke described the occupiers as the tenant's undertenants. For while holding over means that the tort of trespass is being committed so that to succeed in tort some knowledge must be proved, recent cases have emphasised the contractual duty of a tenant to deliver up the premises at the end of the term.

A question of liability for dilapidations when premises had been held by two tenants in common was gone into in *United Dairies Ltd.* v. *Public Trustee and Another* [1923] 1 K.B. 469, and this decision, in arriving at which the position was examined and reviewed at length, does illustrate the fact the landlord may benefit by a co-tenancy; for the judgment contains ample authority to show that, whether the original grant be to several tenants or whether the co-tenancy is the result of an assignment, and whether it be a case of tenants in common or a case of joint tenants, each is responsible for the whole of the damages recoverable.

Another decision of recent years which is worth noting is *Howson* v. *Buxton* (1928), 97 L.J.K.B. 749, C.A., in which it was held that a claim for compensation for disturbance under A.H.A., 1923, s. 12, made by one of two joint tenants, was held to satisfy the statutory requirements because the claimant tenant owned all the goods which had to be removed and thus gave rise to the claim.

Our County Court Letter.

DETINUE OF FRUIT MACHINES.

In *Mattinson* v. *Thomas Burnett & Co., Ltd.*, recently heard at Tadcaster County Court, the claim was for £25 as damages for wrongful detention of three fruit machines. The latter had been installed at York County Aviation Club, of which the defendants were landlords, in which capacity they re-entered into possession on the 8th August, 1937. The plaintiff had arranged with the caterer at Sherburn Aerodrome to divide the profits on the machines in the ratio of 60 per cent. to the caterer and 40 per cent. to the plaintiff, whose share averaged 10s. per week for each machine. The plaintiff's claim to the machines had been disputed until the 19th November, when they were handed over. The defendants' case was that the machines were illegal. His Honour Judge Stewart held that the defendants were not justified in detaining the machines, whether they were illegal or not. In the absence of particulars of the plaintiff's profits, which had not been disclosed, judgment was given in his favour for £5 5s. and costs.

EXECUTORS' LIABILITY FOR COSTS.

In *Hodgson* v. *Button and Another*, recently heard at Scunthorpe County Court, the claim was for £54 12s. 9d. as the balance due to the plaintiff under her father's will. The residuary estate had been divisible between the plaintiff, her two brothers (the defendants, who were executors) and their sister Annie. The latter had been directed by the will to invest the plaintiff's share, and to pay it out to the plaintiff when she was in need of money. Annie, however, had predeceased the testator, and the plaintiff had left the matter until recently in the hands of the defendants. The defendants' case was that the value of the estate was £500, and, although they had been offered legal advice as to the plaintiff's rights, they were doubtful whether she was entitled to be paid the whole balance in full. His Honour Judge Langman held that, although the defendants had acted conscientiously, they had unreasonably resisted proceedings when the plaintiff was entitled to her money. Judgment was given for the plaintiff for the amount claimed, with costs to be paid by the executors personally, and not out of the estate.

THE QUALITY OF STOUT.

A claim for damages in respect of an illness, alleged to be due to drinking a bottle of stout, was recently made at the Liverpool Court of Passage, in *Johnstone* v. *Heeley & Co. (Liverpool) Limited* and *Peter Walker and Son (Warrington and Burton) Limited*. The plaintiff's case was that, on the 12th July, 1937, he called at the Wellington Inn (owned by Peter Walker & Son) and bought and partly consumed a bottle of Guinness's stout bottled by Heeley & Co. He had had nothing to eat, since the previous day, and the stout tasted stale and made him ill for two weeks, whereby he lost wages. The plaintiff's medical evidence was that he had gastric-intestinal trouble, and his stomach was capable of being upset by stout. The licensee of the hotel gave evidence for the defendants to the effect that the stout only came in the previous week, and he himself had had a bottle, which was in good condition. No other complaints had been received. The presiding judge, Sir W. F. K. Taylor, K.C., gave judgment for the defendants, with costs. Compare "Food Manufacturers' liability to Consumer" in the County Court Letter in our issue of the 29th January, 1938 (82 Sol. J. 90)

BANKRUPT'S TITLE TO SILVER PLATE.

In *Edwards* v. *Warner*, recently heard at Colchester County Court, the plaintiff claimed the return of certain silver articles, which she had bought from her sister for £25, in November, 1936. The sister had filed her petition in bankruptcy in April, 1937, and the defendant was the trustee thereunder. A witness stated that he had been present when the £25 was paid for the silver, which was left in the possession of the seller, who gave a receipt for the amount paid by the plaintiff. The defendant's case was that, on the day before the alleged transaction, the sum of £741 had been paid into the bank account of the plaintiff's sister, who was, therefore, not in need of £25. There was no record of the latter amount having been paid into the bankrupt's bank account at the material date. A witness stated that in June, 1937, the bankrupt's housekeeper had brought to him, at 5.30 a.m., some plated goods and china, which were dirty with earth. The goods were subsequently collected by the trustee, the

defendant. His Honour Judge Hildesley, K.C., observed that every such case had its elements of suspicion. Although it was possible that the plaintiff's version was concocted, the probabilities were against it. An order was, therefore, made for the return of the articles claimed, with costs.

Practice Notes.

Practice Points in 1937.

It might be of interest and of value to review the practice points decided in 1937. Not a large number call for comment; of these most have already been expounded at length in this column. But to collect them in a couple of pages may be of advantage, that the busy practitioner may refresh his mind and the newly admitted may write up the commonplace book which all, no doubt, are keeping, or annotate their (Stationery) Office copy of *The Rules of the Supreme Court*.

I. Parties.

1. *Representation Order.*

A representation order under Ord. XVI, r. 9, against the chairman, treasurer, general secretary and financial secretary of a miners' association, as representing the members of the association, was refused by the Court of Appeal where various members had different interests and different defences. The claim was for goods sold in 1921; of the eighty-nine members who had received the goods, some had died, some had ceased to be members, and some had paid for the goods; only eighteen out of the eighty-nine were still members at the date of the writ in 1936: *Barker* v. *Allanson* [1937] 1 K.B. 463; 81 Sol. J. 77.

2. *Representing Estate of Deceased Person.*

A person cannot be appointed under Ord. XVI, r. 46, *without his consent*, to represent the estate of a deceased person. If a deceased person, interested in the matter in question, has no legal personal representative, the court may appoint someone to represent the estate, says the rule. The Official Solicitor, without his consent, had been appointed to represent the estates of two defendants in two separate actions for damages for personal injuries. His appeal was allowed. The court is permitted, but not compelled, to make an order; to appoint someone against his will and without his consent was contrary to justice; *Pratt* v. *London Passenger Transport Board* (1937), 53 T.L.R. 355; 81 Sol. J. 79.

II. Pleadings.

1. *Particulars.*

Particulars will not be ordered of a "rolled-up plea" by the defendant in a libel action—that in so far as the words are statements of fact they are true, and in so far as they are expressions of opinion they are fair comment *upon the said facts*. He is not bound to state which of the words are facts, and which are opinion; nor need he state the facts which are the basis of his comment if those facts are limited to *the said facts*. The term "rolled-up plea" is strictly a misnomer; the plea is not partly justification and partly fair comment, but is wholly a plea of fair comment: *Tudor-Hart* v. *British Union for the Abolition of Vivisection* (1937), 54 T.L.R. 154; 81 Sol. J. 1020.

2. *Extension of Time.*

A plaintiff suing upon an agreement made in 1923 was met (*inter alia*) by the defence of the Limitation Act, 1623. In April, 1936, this point of law was referred to the Master as a special referee; the plaintiff did not take advantage of the Master's suggestion that the matter be adjourned for him to file a reply. A month later, the plaintiff applied for an adjournment in order to deliver a reply. The Master refused, tried the action, and found that the claim was barred. The Court of Appeal declined to disturb the Master's discretion not to grant an adjournment. There was no surprise; in April the matter had been brought to the knowledge of the plaintiff's advisers: *Kronstein* v. *Korda* [1937] W.N. 67; 81 Sol. J. 176.

3. *Amendment of Pleadings.*

Order XXVIII, r. 1, gives the judge power "at any stage of the proceedings" to allow all amendments of pleadings as are necessary to determine "the real questions in controversy." In an action under the Fatal Accidents Act, 1846, and, alternatively, the Employers' Liability Act, 1880, the judge refused the plaintiff leave to set up a breach of statutory duty under the Building Regulations, 1926. A request had previously been made by letter. The Court of Appeal, in ordering a new trial on the ground of misdirection, gave both parties leave to amend their pleadings; Greer, L.J., on the ground that a new trial was being ordered; Slesser and Scott, L.JJ., on the ground that, apart from this order, the absence of amendment would cause injustice, in that the real issue would not be determined: *Hunt* v. *Rice* (1937), 53 T.L.R. 931; 81 Sol. J. 648 (see also 81 Sol. J. 778).

III. The Jury.

1. *Trial by Jury.*

Section 6 of the Administration of Justice (Miscellaneous Provisions) Act, 1933, after dealing with certain actions, including those based upon fraud, libel and slander, provides that "any action to be tried in that (i.e., the King's Bench) Division, may, in the discretion of the court or a judge, be ordered to be tried with or without a jury." The full Court of Appeal (Lord Wright, M.R., Slesser, Romer, Greene, Scott, L.JJ., Greer, L.J., being absent) decided that those ordinary English words have their ordinary English meaning and give the judge an unlimited discretion with which the Court of Appeal would not interfere. Thus, an action for damages for negligence against a railway company was ordered to be tried with a judge and special jury: *Hope* v. *Great Western Railway Company* [1937] 2 K.B. 130; 81 Sol. J. 198.

2. *Separate Verdicts.*

In an action against a husband and wife for damages for several slanders published on divers dates, the jury returned in respect of all the slanders a single verdict against both defendants. No objection was taken at the trial to the jury being asked to deal with the matters as a whole. Scott, L.J., stated that there was nothing in the Judicature Acts or in the Rules of the Supreme Court that separate verdicts and judgments were invariably necessary in respect of separate causes of action on the same writ; it was a question for the discretion of the trial judge. In Greer, L.J.'s view, counsel, not having taken the point at the trial, was disentitled to take it on appeal: *Barber* v. *Pigden* [1937] 1 K.B. 644; 81 Sol. J. 78 (see also 81 Sol. J. 680).

3. *City of London Special Jury.*

To obtain a City of London Special Jury, it is no longer necessary to have an action transferred to the Commercial List, so that an interlocutory application should be made to the judge in charge of that list. The master or judge has power to order a City of London Special Jury; the present action was one for damages for slander, and was not a "commercial cause": *Hagen* v. *National Provincial Bank, Ltd.* (1937), 53 T.L.R. 968; 81 Sol. J. 668 (see also 81 Sol. J. 838).

(*To be continued.*)

Mr. William Bishop, whose retirement from the position of Chief Solicitor of the Southern Railway Company was recently announced, has been presented by the directors with a solid silver inkstand, suitably inscribed, and bearing the facsimile signatures of all the members of the board. Presentations were also made to him by the officers of the company and by the staff of his own department.

To-day and Yesterday.

LEGAL CALENDAR.

31 JANUARY.—On the 31st January, 1802, Lord Chancellor Clare was buried amid the execrations of the Dublin mob: "They followed the mournful cortège to St. Peter's Church and there neither reverence for the church nor respect for the sight of the coffin and the grave even for a moment stayed the undying wrath of the people . . . With difficulty they were restrained from heaping filth and mud upon the lid which covered the face of the dead. One man who treasured in his memory the menace attributed to the deceased 'that he would make the people as tame as domestic cats,' vented his revenge by hurling a dead cat on the coffin."

1 FEBRUARY.—On the 1st February, 1825, Mr. Isaac Espinasse, special pleader, of Gray's Inn, won the last round of a fight with a jeweller who had brought an action against him for the balance of the price of £90 worth of jewellery supplied to his wife. It was proved that the articles had been left with the lady while her husband was away at his chambers and that she had never worn them in his presence. He lived modestly and without display in Guilford Street. Though the Lord Chief Justice had charged the jury strongly in favour of the defendant, they had found for the plaintiff, but now the King's Bench granted a non-suit. Bayley, J., feelingly asked: "While he was working hard in chambers to support his family in respectability and comfort, was he to be made liable for jewels when the appearance of his furniture informed the tradesmen who called for orders in his absence that they were wholly unsuited to his station?"

2 FEBRUARY.—Mr. Baron Savile was a Yorkshireman, and when he died on the 2nd February, 1607, though his body was buried in St. Dunstan's-in-the-West, in Fleet Street, his heart was carried back to Methley, in his native county and deposited in the church where his ancestors lay.

3 FEBRUARY.—On the 3rd February, 1915, Bargrave Deane, J., gave judgment for the five-year old petitioner in the great Slingsby legitimacy case. The battle-ground was the title to a Yorkshire estate, but the vital scenes, fantastic enough for a novelist, were laid in San Francisco, whither it was said the supposed mother had gone to find a strange baby which she had passed off as her own. Impressed by the child's likeness to both its alleged parents, a likeness which he invoked the aid of Sir George Frampton, the eminent artist, to verify, the judge decided for legitimacy. The Court of Appeal and the House of Lords, however, held otherwise.

4 FEBRUARY.—The disordered state of Ireland in 1811 is well exemplified by Lord Norbury's charge to the Grand Jury at Clonmel, on the 4th February, in opening the Special Commission to try members of certain unlawful organisations: "In this county, the parliamentary functions of Caravats and Shanavists have promulgated the laws, have levied contributions and forces . . . They have excited the standard of their terror . . . Nocturnal and barbarous outrage has been let loose and a paltry banditti of the lowest description and insignificant when openly opposed, has inflicted the cruellest torture on the peaceable and unprotected cottager and, shameful to relate, the native chastity of females is universally violated."

5 FEBRUARY.—A typical case was that of David Lamy, tried on the 5th February, for having fired a gun at one, George Moore, with intent to kill him. The victim of the attack and two other men had been valuing tithes in the parish of Ballybacon, when the prisoner and another man, both armed, had approached, confiscated their books and sworn them never again to value any tithes. After that, two shots had been fired at them. Lamy was convicted and Lord Norbury pronounced sentence of death.

6 FEBRUARY.—On the 6th February, 1585, there died Edmund Plowden, whom Coke calls "that great lawyer and sage of the law."

THE WEEK'S PERSONALITY.

By his contemporaries, Edmund Plowden was acknowledged to be the greatest and most honourable lawyer of his time, yet to-day, few remember his name or realise that to him is due the credit of the erection of Middle Temple Hall, built under his supervision. It was the misfortunes of the times in which he lived that prevented his talents from shining out from the judgment seat, for in Elizabeth's reign, things went hard with the Roman Catholics and he was among the most faithful. The Queen indeed offered to make him Lord Chancellor if he would change his religion, but his answer blended respect and firmness. "Hold me, dread Sovereign, excused," he wrote. "Your Majesty well knows I find no reason to swerve from the Catholic faith in which you and I were brought up. I can never, therefore, countenance the persecution of its professors. I should not have in charge your Majesty's conscience one week before I should incur your displeasure, if it be your Majesty's royal intent to continue the system of persecuting the retainers of the Catholic faith." So he lived his life through, without promotion indeed, but under the protection of his own integrity and his acknowledged greatness, unscathed at least amid the perils of a bitter persecution.

EARLY AUSTRALIA.

Australia, celebrating the hundred and fiftieth anniversary of the landing of the first batch of felon colonists, must do so with mixed feelings, tragedy and comedy are so closely woven in the stuff of the story that followed. In the first fifty years, a hundred thousand souls made the dreadful journey which a Lord Chief Justice described as "a summer excursion to a happier and better climate." Yet in the early days, when Whitehall paid the shipping contractors according to the number of convicts embarked, the result of the policy was that from one-third to two-thirds perished at sea in the overcrowded holds. Among the shades of these criminals move the ghosts of such children as six-year-old Dominic Raffety, transported for seven years for having stolen ninepence. (He had, we are told, "lived by crime from the moment he was capable of committing it.") Across the years we hear the agonised appeals to the judges: "Make it anything but life, my lord." We see the young colony from the beginning struggling against mismanagement at home and inadequate supplies, and at one time the Governor's valet almost single-handed instructing the London criminal in the agricultural subjugation of a continent twice the size of Europe.

THE LIGHTER SIDE OF TRANSPORTATION.

But beside the dark picture of hardship and of punishments so insanely brutal that they drove men mad, there is a lighter element. Those far-sighted criminals who had secured the proceeds of their crimes in the hands of their wives were often followed by them beyond the seas. The woman would plead to the Governor to have her husband assigned to her as servant, a prayer often fortified by the display of two or three children, as likely as not borrowed for the occasion from the Sydney underworld. Thus the door would be opened to a life of ease and affluence and display, of fine carriages and prancing horses. Hard was the lot of inexpert felons, labouring men and mechanics, but the thief and the swindler became gentlemen convicts, and at one time the only classical education obtainable in New South Wales was at the academy kept by a transported forger. As for the settler element, no matter how poor they may have been when they left England, in the course of their rise to prosperity and honour they speedily acquired so exclusive a haughtiness that they came literally to regard themselves in the light of the "Ancient Nobility of Botany Bay."

Obituary.

MR. S. D. COLE.

Mr. Sanford Darley Cole, Barrister-at-Law, of King's Bench Walk, Temple, E.C., died on Wednesday, 26th January. Mr. Cole was called to the Bar by the Middle Temple in 1923.

MR. E. H. BLAKER.

Mr. Ernest Henry Blaker, solicitor, a member of the firm of Messrs. Blaker & Peters, of Chichester, died on Saturday, 29th January. Mr. Blaker, who was admitted a solicitor in 1877, was Registrar and High Bailiff of Chichester and Arundel County Courts.

MR. H. E. FIRTH-FRANKS.

Mr. Henry Edmund Firth-Franks, solicitor, of Rye, died on Thursday, 27th January, in his eighty-fourth year. Mr. Firth-Franks, who was admitted a solicitor in 1879, held the appointment of Clerk to the Vestry.

MR. E. C. HARRIS.

Mr. Ernest Cecil Harris, solicitor, senior partner in the firm of Messrs. Harris & Harris, of Sittingbourne, died on Thursday, 27th January. Mr. Harris, who was admitted a solicitor in 1891, was formerly coroner for Sittingbourne and Town Clerk of Queenborough, Kent.

MR. T. W. HORTON.

Mr. Thomas William Horton, solicitor, senior partner in the firm of Messrs. Wragge & Co., of Bennett's Hill, Birmingham, died on Friday, 28th January, in his sixty-eighth year. Mr. Horton was educated at Uppingham and Clare College, Cambridge, and was admitted a solicitor in 1893. He was a director of a number of companies in the Midlands.

MR. J. M. B. TURNER.

Mr. John Mayer Burrow Turner, solicitor, senior partner in the firm of Messrs. J. M. B. Turner & Co., of Bournemouth, died in a nursing home on Sunday, 23rd January, at the age of sixty-eight. Mr. Turner served his articles at Stoke-on-Trent, and was admitted a solicitor in 1893. He practised for a few years at Durham before going to Bournemouth in 1898. He was The Law Society's representative on the board of legal studies at University College, Southampton, for many years, and he was also chairman of the Court of Referees.

Books Received.

Tax Cases. Vol. XXI. Part III. 1938. London: H.M. Stationery Office. 1s. net.

Carver's Carriage of Goods by Sea. Eighth Edition, 1938. By JAMES S. HENDERSON, and SANFORD D. COLE, of the Middle Temple, Barristers-at-Law. Royal 8vo. pp. cvi and (with Index) 1131. London: Stevens & Sons, Ltd. £2 10s. net.

National Health Insurance. By W. J. FOSTER, LL.B., of Gray's Inn, Barrister-at-Law, and F. G. TAYLOR, Fellow of the Institute of Actuaries. Third Edition, 1938. Demy 8vo. pp. xv and (with Index) 288. London: Sir Isaac Pitman & Sons, Ltd. 10s. 6d. net.

The Honorary Secretary's Guide. By LESLIE BONNET, B.A., LL.B. 1938. Demy 8vo. pp. viii and (with Index) 40. London: Gee & Co. (Publishers) Ltd. 3s. 6d. net.

National Defence Contribution. By ROGER N. CARTER, M.Com., F.C.A., and HERBERT EDWARDS, M.A. 1937. Demy 8vo. pp. (with Index) 53. London: Gee & Co. (Publishers) Ltd. 5s. net.

Notes of Cases.

Court of Appeal.

Salvalene Lubricants Ltd. *v.* Darby.

Greer, Slesser and Scott, L.JJ. 11th January, 1938.

PRACTICE — SLANDER ACTION — TRIAL WITHOUT JURY — SECOND DEFENDANT ADDED DURING HEARING—APPLICATION FOR JURY—ADMINISTRATION OF JUSTICE (MISCELLANEOUS PROVISIONS) ACT, 1933 (23 & 24 Geo. 5, c. 36), s. 6—R.S.C. Ord. 36, r. 1.

Appeal from a decision of Tucker, J.

At the hearing of an action for slander before a judge without a jury, it was found that the statements alleged had been made not by the defendant, but by a person not a party, whom Tucker, J., gave the plaintiff leave to add as a defendant, ordering that the trial should be before himself without a jury.

GREER, L.J., allowing the appeal of the first defendant, said that by s. 6 (1) (*b*) of the Law Reform (Miscellaneous Provisions) Act, 1933, a defendant in an action for slander was entitled to have it tried with a jury. But it had been argued that the application must be made in due time under Ord. XXXVI, r. 1, *i.e.*, not later than four days after delivery of the notice of trial. But so far as this defendant was concerned there never had been any notice of trial, and therefore, it could not be said that his application for a jury was made later than four days after the notice of trial was delivered. The judge should have made the order sought for trial with a jury. The difficulty of retaining the case before him if it was to be so tried was not a sufficient ground for refusal.

SLESSER and SCOTT, L.JJ., agreed.

COUNSEL: *Doughty*, K.C., and *Gorst*; *Eddy*, K.C., and *Sir George Jones*.

SOLICITORS: *R. J. Clark*; *Cameron, Kemm & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Phillips and Another *v.* A. Lloyd & Sons Ltd.

Greer, Slesser and Scott, L.JJ. 13th January, 1938.

PRACTICE—HIGH COURT ACTION—CLAIM FOR DAMAGES FOR PERSONAL INJURIES—ALLEGED NEGLIGENCE AND BREACH OF STATUTORY DUTY—ORDER FOR TRANSFER TO COUNTY COURT IN DEFAULT OF SECURITY FOR COSTS—INTERFERENCE BY COURT OF APPEAL—GROUNDS—COUNTY COURTS ACT, 1934 (24 & 25 Geo. 5, c. 46), s. 46.

Appeal from a decision of Porter, J.

In an action commenced in the High Court an infant plaintiff and her step-father claimed damages for injury sustained by her in an accident in March, 1937, alleging negligence and breach of a statutory duty under the Factory and Workshops Act, 1901, s. 10, by the defendants. The right thumb had been amputated and a further operation might possibly be necessary. The defendants admitted the accident but denied all the other allegations in the statement of claim. They relied on alleged contributory negligence by the infant plaintiff, the doctrine of common employment and the defence of *volenti non fit injuria*. Porter, J., in chambers, ordered that, unless the plaintiffs gave security for the defendants' costs in the sum of £30, the action should be transferred to the county court.

GREER, L.J., allowing the plaintiffs' appeal, said that the respondents had relied on *Culver* v. *Beard*, 81 SOL. J. 156, in the same branch of the Court of Appeal. The matter had been considered in *Stevens* v. *Walker* [1936] 2 K.B. 215, in the other branch of the court. As the result of a consultation it had been determined that both branches should act on the principle of which *Stevens* v. *Walker*, *supra*, was an example, that where the court came to the conclusion that the judge

had not given adequate weight to the considerations which should weigh with him, the court might exercise its own discretion and reverse the order made by him. This was emphasised in *Evans* v. *Bartlam* [1937] A.C. 473. As in the present case, the court had come to the conclusion that the learned judge had not adequately considered the seriousness and importance of the claim for damages, it was impossible to say that the appeal should not be allowed. The court came to the conclusion that there might be difficult questions of law as well as of fact with regard to the damages and the judge's order could be reversed on the ground that he had not given sufficient weight to the amount of the injury and to the questions of law which would necessarily arise.

SLESSER and SCOTT, L.JJ., agreed.

COUNSEL: *H. Hughes*, K.C., and *M. O'Sullivan*; *Paull.*

SOLICITORS: *Churchill & Co.*; *James Turner & Son.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

The "Stranna."

Greer, Slesser and Scott, L.JJ. 31st January, 1938.

SHIPPING—BILL OF LADING—CARGO OF TIMBER—DECK CARGO—LOSS BY SHIP LISTING—NON-DELIVERY—PERILS AND ACCIDENTS OF THE SEAS — WHETHER SHIP-OWNERS LIABLE.

Appeal from a decision of Langton, J.

By bills of lading dated Alma, N.B., the 23rd July, 1935, the owners of a steamship acknowledged the shipment of 117,198 pieces of timber in good order and condition and undertook to deliver them in like good order and condition at Belfast. The exceptions in the bill of lading included "perils of the sea . . . and all and every other dangers and accidents of the seas, rivers and navigation wheresoever, including ports of loading . . . of whatever nature and kind soever . . . always mutually excepted, even when occasioned by negligence, default, or error in judgment of the . . . master mariners or other servants of the shipowners." It was also provided that the deck cargo was to be "at charterer's risk." While loading 4,843 pieces of timber were lost overboard and in this action against the shipowners the charterers alleged that the loss was due to the negligence of the master or other officers in so loading the ship or stowing the timber as to render the ship unstable and bring an excessive strain to bear on the timber used as uprights to support the deck cargo causing the uprights to give way. The defendants alleged that at the time the weather was foggy and there was a strong flood tide and undercurrent; that the ship took a heavy list, first to port and then to starboard, causing the stanchions securing the deck cargo to break; and that, owing to the strong tide and the fog, it was impossible to retrieve the timber thus thrown overboard. Langton, J., dismissed the action, holding that the loss was by perils of the sea and the defendants were protected by the bills of lading.

GREER, L.J., dismissing the plaintiffs' appeal, said that they had contended that the loss was not by a peril of the sea and the facts were not within the exceptions clause because the ship was not seaworthy at the time of the loss. This argument failed. There was an implied warranty of seaworthiness at the time the ship started to load her cargo, but there was no breach of that warranty, because when it came into operation she was in all respects fit to load the cargo. This was a loss by a peril of the sea within the exceptions clause. Moreover, the loss of the timber was chiefly due not to its falling overboard, but to its being carried away by the currents during the fog.

SLESSER and SCOTT, L.JJ., agreed.

COUNSEL: *Sir Robert Aske*, K.C., and *Naisby*; *Willink*, K.C., and *C. T. Miller.*

SOLICITORS: *Waltons & Co.*; *W. A. Crump & Son.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Cross (Inspector of Taxes) *v.* London Provincial Trust Ltd.

Greene, M.R., Lord Romer and MacKinnon, L.J.

3rd and 6th December, 1937, and 31st January, 1938.

REVENUE—INCOME TAX—FOREIGN BONDS—ISSUE OF FUNDING BONDS INSTEAD OF PAYMENT OF INTEREST—SALE OF BONDS—WHETHER PROCEEDS ASSESSABLE—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), Sched. D, Case IV.

Appeal from a decision of Finlay, J. (81 SOL. J. 787).

The company were holders of certain Brazilian bearer bonds. The Brazilian Government being obliged to suspend payment of interest, made the coupons exchangeable for 20-year funding bonds. The company having, as they fell due, exchanged the coupons for funding bonds, sold the latter. Assessments were made on the company in respect of the proceeds of these sales. Finlay, J., held that the transactions could not be regarded as giving rise to income from securities abroad within Sched. D, Case IV.

GREENE, M.R., dismissing the Crown's appeal, said that income could be in the form of money's worth. If the holder of a security, the contractual income from which was money received from the person liable to pay something of money's worth, such as goods instead of the money, those goods would be income arising from the security. But where there was a mere substitution of a promise to pay at a later date for the obligation to make an interest payment immediately due, the owner of the security could not be said to have received income from it. The payment had been postponed. It could not make any difference if, on the true reading of the transaction, the original obligation was extinguished and the promise to pay at a later date accepted in its place. A security produced the income appropriate to it. The income appropriate to a money bond was money. If the parties agreed to substitute something different as income, the thing so substituted became the appropriate income. But when the debtor defaulted and the appropriate income, being money, was not changed into something else, but remained money which the debtor promised to pay at a later date, it could not be said that the security had produced income, since the income which the security was intended to provide had not been provided. This was not affected by the facts that, as in the present case, a new undertaking to pay was given, the new undertaking was in a form which could be conveniently dealt with on the market and it might contain provisions giving better security for the money due. It was one thing to say that income was none the less income because it was received in the shape of money's worth instead of money. That was true. It was quite different to say that the receipt of money's worth was necessarily the receipt of income. That was not true.

Lord ROMER and MACKINNON, L.J., agreed.

COUNSEL: *The Attorney-General* (Sir Donald Somervell, K.C.), *J. H. Stamp* and *R. Hills*; *Latter*, K.C., and *Scrimgeour.*

SOLICITORS: *Solicitor of Inland Revenue*; *Linklaters & Paines.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Broughton *v.* Snook.

Farwell, J. 17th December, 1937.

VENDOR AND PURCHASER—ORAL CONTRACT—PART PERFORMANCE—CLAIM FOR SPECIFIC PERFORMANCE—ALLEGED INCAPACITY OF VENDOR—ONUS OF PROOF—LAW OF PROPERTY ACT, 1925 (15 Geo. 5, c. 20), s. 40.

In 1935, one, Snook, a man about eighty years old, was owner in fee simple of an inn let to a brewery company at £150 a year for a term ending on the 31st December, 1936. One, Heathcote, was in occupation as sub-tenant of the brewers. The plaintiff, the licensee and manager of a flourishing hotel

in Sheffield, made the acquaintance of Snook in April, 1935, and it was orally agreed between them that he should buy the inn for £2,000, but that the sale should not be completed till after the expiry of the brewery company's lease. In September, 1935, Heathcote wished to leave the inn, and in October, after consultation with Snook, the plaintiff took possession of it and got the necessary transfer of the licences, giving up his Sheffield hotel. He executed various structural improvements costing about £200, and of these, Snook had knowledge. Snook having been taken ill in December, 1936, died in March 1937, being in the meantime incapable of transacting business. The defendants, his executors, having advertised the inn for sale in May, the plaintiff commenced an action for specific performance of the oral contract, relying on his taking possession and executing improvements as part performance. The defendants relied on the Law of Property Act, 1925, s. 40, and also pleaded that at the time of the interview, when the alleged contract was made, Snook was by reason of his health incapable of transacting business, though they did not plead that the plaintiff knew of this incapacity.

FARWELL, J., in giving judgment, said that if the plea meant that the oral contract was not binding on Snook by reason of the fact that at the date when it was made, his mental condition was such as to render him incapable of transacting business, it was demurrable, because to rely on such a plea the defendants must also plead and prove that his condition was or should have been known to the plaintiff: *Imperial Loan Co.* v. *Stone* [1892] 1 Q.B. 599. So far as that part of the defence was concerned, the defendants could not rely on it, and evidence as to mental or physical incapacity was inadmissible because irrelevant. But it had been said for the defendants that this plea was to be used for showing that the acts relied on as part performance were done when Snook was not in a condition to appreciate what he was doing by reason of his physical or mental health. An oral contract relating to land was enforceable unless s. 40 of the 1925 Act was pleaded. *Primâ facie*, that was a good answer to the plaintiff's claim, and it was for him to show circumstances entitling him to succeed notwithstanding it. One method of escape from that defence was a plea of part performance. What was necessary to set up that plea successfully was stated in Fry on "Specific Performance," sixth ed., p. 276. The defendants had argued that the onus was on the plaintiff to prove affirmatively that there was nothing to prevent the contract being enforceable, e.g., that he must prove that the other party was not under a mental or physical disability rendering it improper for the contract to be enforced. His lordship could not accept that contention. If the defendant sought to rely on the mental or physical incapacity of the vendor or purchaser as the case might be, he must specifically plead and prove it. It was not for the plaintiff to prove a negative. Further, if the defendants relied on the mental or physical condition of Snook, they were bound to plead and prove the knowledge of the other party and in the absence of such a plea could not rely on that defence. On the question whether the acts of part performance relied on were such as to entitle the plaintiff to succeed and whether it could be said that they were "necessarily referable to the contract," that phrase did not mean that the acts could not be referable to the contract because there might be some other fantastic explanation. The court had to see whether in all the circumstances of the particular case the acts could be said to be necessarily referable to the contract. The fact that an ingenious mind might suggest some other and improbable explanation of the facts was not necessarily fatal to the plaintiff. Here it was fantastic to suppose that an experienced business man would have abandoned a flourishing business and moved into a small inn expending a considerable amount of money on the premises had he contemplated the possibility of being evicted at the end of the year. It was equally impossible to imagine Snook permitting this on the footing that he could evict the plaintiff at the end of the year, assuming, as the evidence established, that he intended to act rightly and fairly. There should be an order for specific performance.

COUNSEL: *Harman*, K.C., and *Watmough*; *Roxburgh*, K.C., and *Boraston*.

SOLICITORS: *Gibson & Weldon*, for *Smith, Menneer & Co.*, of Sheffield; *Vizard, Oldham, Crowder & Cash*, for *Edward W. Pye-Smith & Son*, of Sheffield.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re **Godwin; Coutts** *v.* **Godwin.**

Farwell, J. 13th January, 1938.

WILL—TRUSTS DECLARED—BANKERS TRUSTEES—SUMS TO BE SET ASIDE TO PRODUCE STATED ANNUITIES—INCOME AND WITHDRAWAL FEES PAYABLE TO BANKERS—WHETHER FALLING ON ANNUITIES OR RESIDUE.

A testator, who died in 1935, appointed the plaintiffs who were bankers to be his executors and trustees, declaring that they should be entitled to remuneration in accordance with their published scale of fees. By cl. 5, he directed his trustees to set aside out of his estate a sum sufficient to produce an annuity of £100 to be paid to A.F.G. during her life, the sum so set aside to fall into his residuary estate after her death. By cl. 7 he directed his trustees to set aside out of his estate a sum sufficient to produce, after deduction of income tax, the clear yearly sum of £500, to be paid to M.C.P. during her life, and after her death to stand possessed of the investments representing the sum so set aside in trust for her child or children, who being male should attain twenty-one years, or being female should attain that age or marry. If no child attained a vested interest in the fund, it was to sink into his residuary estate. By cl. 11 (i) he directed his trustees to set apart so much of his residuary estate as would produce the clear annual sum of £100 and to pay the income to M.G. during her life, and, subject to that trust, he directed that the fund should sink into his residuary estate. According to its scale the bank was entitled to an income fee of 2 per cent. on income received, this fee being reduced to 1 per cent. if the person entitled kept his banking account with them. A withdrawal fee was payable on the withdrawal from the estate of any property. The question arose whether the burden of these fees should fall on the income or capital of the respective funds or on the income or capital of the residuary estate.

FARWELL, J., in giving judgment, said that after the deaths of A.F.G. and M.G. the funds producing their annuities would fall into residue which would, therefore, have to bear the withdrawal fee. If no child of M.C.P. attained a vested interest in the fund producing her annuity, it would fall into the residue which would accordingly bear the withdrawal fee, but if on her death there were children of hers who took, so that the fund could never return to residue, the withdrawal fee would be payable by them. As to the income fee, this was not a gift of an annuity payable out of residue as in *In re Hulton's Will Trusts* [1936] Ch. 536, and *In re Riddell* [1936] Ch. 747, nor a case of a definite sum directed to be set aside as a trust fund as in *In re Roberts' Will Trusts* [1937] Ch. 274. It fell between the two. In the case of the annuity for A.F.G. the income of the fund set aside should bear the income fee. The trustees would not be doing their duty if they set aside a sum sufficient only to provide £100 for the annuitant, less the amount of the income fee. It was an administration expense and if the sum set aside did not provide enough to pay it and then give the annuitant £100 a year, the trustees were not doing what the testator had directed. Therefore, so far as the gift to A.F.G. and also the gift to M.G. were concerned, the sum set aside must be sufficient to pay the full annuity together with a sum sufficient to produce the income

to pay the income fee. This must be taken as 2 per cent. The fact that some reduction might be made could not be considered. It had been argued that in the case of M.C.P., her children if they took would get an undue advantage, because they would get a capital sum in addition to that required to produce the amount of the annuity specified. But that was the result of the testator's direction and the contention failed.

COUNSEL: *A. Berkeley; David Jenkins; R. L. Edwards.*
SOLICITORS: *Merton Jones, Lewsey & Jefferies.*

[Reported by FRANCIS. H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Churchill *v.* Norris; Maidment *v.* Same.

Lord Hewart, C.J., Branson and Humphreys, JJ.
20th January, 1938.

ROAD TRAFFIC—HEAVY MOTOR CAR—LORRY LADEN WITH TIMBER—WEIGHT OF LOAD ESTIMATED BY SIZE—LOAD IN EXCESS OF PERMITTED WEIGHT—NO WEIGHBRIDGE AVAILABLE—WHETHER OFFENCE COMMITTED WHILE LORRY ON THE ROAD TO BE WEIGHED AT THE FIRST OPPORTUNITY—MOTOR VEHICLES (CONSTRUCTION AND USE) REGULATIONS, 1937, S.R. & O., reg. 64.

Appeals by case stated from a decision of Weston, Bath justices.

On the 17th July, 1937, informations were preferred by the respondent, Norris, a police superintendent, under reg. 64 of the Motor Vehicles (Construction and Use) Regulations, 1937, against the appellants, charging the appellant, Churchill, with having, on the 10th June, 1937, at Corston, Somerset, unlawfully used, and the appellant, Maidment, with having on that date permitted to be used, on a public road a heavy motor car with four wheels, when the sum of the weights transmitted to the road surface by all the wheels exceeded 12 tons, contrary to the regulation in question. At the hearing of the informations, the following facts were proved or admitted: On the day in question Churchill was driving a lorry belonging to his employer, Maidment. The lorry was laden with timber. As it appeared to be overloaded, it was stopped by two police constables, who requested Churchill to take it with its load to a weighbridge where it was weighed in the driver's presence and found to register more than the permitted weight. The official in charge of the weighbridge issued a weight ticket showing the weight registered. Churchill had been instructed by Maidment to proceed to Homerton, near London, to collect seven tons of timber. Timber merchants usually take the weight of timber by its size, and the timber in question was supposed, by its size, to be within the weight of seven tons, which would have been within the weight limit laid down by the Regulations. Churchill was authorised by Maidment to weigh his vehicle and its load after loading, and practically every load of timber carried by Churchill was weighed in that manner. The particular load in question was not at once weighed, because, by the time the lorry was loaded, there were no weighbridges open. On the same evening Churchill drove the lorry to Chelsea, where he stayed the night. Early the next day, before any weighbridges were open, he left Chelsea for Somerset. Maidment had instructed Churchill not to carry more than the legal weight. Written instructions to that effect were not only given to Churchill but were also placed in the cab of the lorry. Maidment further instructed his drivers that, if they were in doubt as to the weight, they were to have the lorry weighed. Churchill had instructions to take the vehicle and have it weighed at the first opportunity. In the present instance, Churchill's order was to take a load of seven tons, and Maidment was not being paid for any weight in excess of that figure. Churchill could have had the vehicle weighed on the 10th June. The justices were of opinion that the appellants were guilty of the offences charged.

LORD HEWART, C.J., said that he was satisfied that there were materials which justified the justices in coming to the conclusion to which they had come. It was quite plain that, in the opinion of the justices, founded upon adequate materials, the appellant, Maidment, was winking at or taking the risk of a known practice whereby it was reasonably safe to suppose than an offence of this kind would be permitted. The fair inference from the justices' findings was that the owner of the lorry took the risk that the driver would for some part of the highway be driving this lorry with its excessive load. The finding that Churchill "was authorised by" Maidment "to weigh his vehicle and load after loading, and that practically every load of timber carried by him was weighed in that way," did not help the appellant, Maidment, if there was a practice known to him which was at least capable of leading or likely to lead to the offence complained of. Counsel for the respondent had pointed out three ways in which, by giving the proper instructions, the owner of the lorry had it in his power to prevent the commission of this offence. The appeals must be dismissed

BRANSON and HUMPHREYS, JJ., agreed.

COUNSEL: *J. Scott Henderson*, for the appellants; *L. H. Collins*, for the respondent.

SOLICITORS: *Barnes & Butler*, for *J. W. Miller*, Poole; *Taylor, Willcocks and Co.*, for *E. G. Ames and Son*, Frome.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Bank of Athens Soc. Anon. Etc. *v.* Royal Exchange Assurance.

Branson, J. 1st February, 1938.

PRACTICE—SUM PAID BY DEFENDANTS TO PLAINTIFFS—PLAINTIFFS' CLAIM SUBSEQUENTLY FOUND VITIATED BY FRAUD—PLAINTIFFS INNOCENT—SUM REPAID TO DEFENDANTS—WHETHER ENTITLED TO INTEREST—LAW REFORM (MISCELLANEOUS PROVISIONS) ACT, 1934.

Application for an award of interest under s. 3 of the Law Reform (Miscellaneous Provisions) Act, 1934 (24 & 25 Geo. 5, c. 41), s. 3 (1).

The facts leading up to the application were as follows: An action had been brought by certain mortgagees of a Greek steamer, which was lost at sea in July, 1932, against the insurers. The defendants' insurers, after making inquiries, paid £180 on account of the loss. Subsequently, they declined to make any further payment, with the result that the plaintiffs brought an action on the policy. Judgment was given for the defendants on the ground that the steamer had been deliberately cast away with the connivance of the owner. The defendants then claimed back the £180 which they had paid on account, and the plaintiffs, though innocent mortgagees, consented to judgment in the action and to an order for repayment of the £180 to the defendants, with costs. The defendants now applied for interest on the £180 for the time during which it had been in the hands of the plaintiffs, the claim, although small, being made as a matter of principle. The defendants contended that, under s. 3 (1) of the Law Reform (Miscellaneous Provisions) Act, 1934, the court had an absolute discretion as to the awarding of interest, and that interest should be awarded in the present case because, at the time when the £180 was paid, the defendants were not aware that the claim in respect of the loss was vitiated by fraud. The plaintiffs contended that the court had no power to award interest as claimed by the defendants, and that Acts of Parliament had not a retrospective effect unless they expressly so provided. They relied on the judgment of Lord Lindley in *Lauri* v. *Renad* [1892] 3 Ch. 421. It was further contended that, at the time when the £180 was paid, the only provision with regard to interest was that contained in the Civil Procedure Act, 1833, and it was pointed out that in fact no demand for repayment of the £180 was made until November,

1936, and no demand for interest on it was made until a few days ago.

BRANSON, J., said that the words of s. 3 (1) were quite general; they enacted that in any proceedings the court might, if it thought fit, order that interest should be paid. If it had been intended to limit the application of the section to cases which arose after the Act of 1934 came into force, such a limitation would have been expressly stated. In his opinion, therefore, he had power to order that interest should be paid on the £180 from the time when it came into the hands of the plaintiffs. Whether he should exercise his discretion or not was another question. The plaintiffs had had £180 of the defendants' money in their pockets since 3rd February, 1933, and he saw no reason why interest should not be awarded. What was the proper rate to allow was to some extent guesswork, but he thought that it would be right to allow 4 per cent.

COUNSEL: *Cyril Miller*, for the applicants (the defendants); *W. L. McNair*, for the respondents (the plaintiffs).

SOLICITORS: *Richards and Butler; Ince and Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division

Wadham *v.* Wadham.

Bucknill, J. 7th, 8th and 15th December, 1937.

DIVORCE—PETITION FOR VARIATION OF SETTLEMENT—POWER OF WITHDRAWAL UPON SUBSEQUENT MARRIAGE—REVERSIONARY INTERESTS OF CHILDREN AFFECTED—*Quid pro quo*—ACCELERATION OF RESPONDENT'S POWER OF WITHDRAWAL REFUSED—SUPREME COURT OF JUDICATURE (CONSOLIDATION) ACT, 1925 (15 & 16 Geo. 5, c. 49), s. 192.

This was a motion on behalf of the petitioner to confirm the report of the registrar on her petition for variation of settlements.

By an ante-nuptial settlement the petitioner's parents brought into settlement property worth £240,000. The respondent settled property worth £10,000. The respondent's fund at the date of the petition had not fallen into possession. The husband and the wife were to have the income of their respective funds for life. After the death of the survivor, the trustees were to hold the property brought into settlement for the children or remoter issue of the marriage as the husband and wife should jointly appoint, and, in default of appointment, in trust for the children of the marriage in equal shares. The survivor of the husband and wife was given a power after the death of the other, and either in contemplation of, or after, his or her future marriage, to appoint that part of the capital should be withdrawn from the settlement, and be held upon such trusts for the benefit of the after-taken husband or wife or such survivor and the issue of such future marriage; the power of withdrawal being limited to one-third part if there were two or more children of the marriage who should attain the age of twenty-one, or, in the case of a girl, should marry, and to one-half if there should be only one such child. There were two children of the marriage, both girls, born in 1930 and 1931, respectively. In his report the registrar submitted that the joint power of appointment over the petitioner's fund should be revoked, and that the petitioner should exercise that power as if she had survived the respondent, and that the power of withdrawal should be exercisable forthwith by the husband or the wife as if the other had died in his or her lifetime, and as if he or she were the survivor. Counsel appearing on behalf of the guardian *ad litem* of the children of the marriage strenuously opposed the latter part of this recommendation, and argued that if it were to be carried out, the children should receive some pecuniary compensation either by the petitioner undertaking to make provision for them on their marriage or on attaining the age of twenty-one, or else by limiting the amount to be withdrawn to something less than the full amount of one-third or one-half.

BUCKNILL, J., in the course of delivering a considered judgment, referred to *Whitton* v. *Whitton* [1901] P. 348, and directed that if the petitioner should secure a sum of £250 per annum gross to each of the two children on attaining the age of twenty-one or on marriage (which he, his lordship, did not think he had the power to order, but he understood the petitioner was willing to make such a provision), the petitioner's power of withdrawal should be varied as prayed; if she failed to secure such annual sum to the children, then her power of withdrawal should be varied as prayed, but should be limited to two-thirds of the amount which she was empowered to withdraw upon the death of the respondent. With regard to the respondent's application that he should be empowered to anticipate his right of withdrawal, such an anticipation was clearly not for the benefit of the children of the marriage, and indeed was prejudicial to them, and no reason had been put forward for such a variation.

COUNSEL: *Bayford*, K.C., and *W. Latey*, for the petitioner; *Andrew Clark*, for the infants; *The Hon. Victor Russell*, for the respondent; *M. G. Hewins*, for the trustees.

SOLICITORS: *Simmons & Simmons; Burton, Yeates & Hart*, for *Hart Jackson & Sons*, Ulverston; *Hunters*.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

The Law Society.

SPECIAL GENERAL MEETING.

The customary special general meeting of The Law Society was held on the 28th January at Bell Yard.

The President, Mr. F. E. J. SMITH, took the chair, and referred in his address to a number of important matters with which the Council had dealt since the publication of the annual report.

The Law Society and the Provincial Law Societies, had, he said, administered the High Court Poor Persons Procedure since 1925, when they had taken it over from the Government. They had carried this very heavy burden with success. Accordingly the Council were concerned, almost more than anyone else, to see that the conduct of the additional divorce cases which must follow the passing of the Matrimonial Causes Act, 1937, was made as easy as possible. The Council, in almost every annual report on the procedure since 1925, had urged that jurisdiction to deal with divorce cases should be conferred upon all district High Court registries and that petitions should be heard at all assize towns. At the present time—probably owing to the Council's representations—the number of district registries and assize towns upon which jurisdiction had been conferred was larger than in 1925, but many still remained without jurisdiction. The Council, a few weeks ago, had therefore resolved unanimously to express once again to the Lord Chancellor the hope that it would be possible at no distant date to confer jurisdiction upon all the district registries and all the assize towns. The Council had also stated that the extension was required to meet the great increase of work which would inevitably result from the new Act. The Lord Chancellor had replied that the proposals would be considered, but that it appeared prudent first to see how the applications under the new Act developed. The Council had been very sorry to receive this reply. They felt that the extension of the jurisdiction should not be deferred any longer, and that unless effect were given to their recommendation as soon as possible, there would be a grave risk that the Poor Persons Committees would find it difficult to keep abreast of their increased duties. So strongly did the Council feel on this matter that they had asked the Lord Chancellor to receive a deputation. During the first two or three weeks of the New Year applications had poured into the London Committee, at the rate of about 100 per day. The number had now dropped to approximately 50 a day. The committees believed that the crest of the wave had passed and that, when things had settled down, the normal number of applications would be about 20 per cent. greater than before the Act.

The question of extending divorce jurisdiction over the country was intimately associated with the recent appointment of two more judges to the Divorce Division. The President, doubtless like most members, had read with interest the report of the debates in both Houses on the Supreme Court

of Judicature (Amendment) Bill, and had sympathised to some extent with the criticisms that had been expressed. He was convinced that it should be possible readily to extend the jurisdiction of the district registries. Then not merely would many conducting solicitors be free from the necessity of instructing agents in assize towns, but it would be possible to meet the needs of the large number of persons whose means, though limited, deprived them of the right to make use of the Poor Persons Procedure and thus have their petitions heard in or near towns where their witnesses resided.

The President quoted in full a long extract from Lord Atkin's speech in which his lordship had said that, whereas English jurisprudence had boasted for generations that justice was taken to the door of the litigant, yet the position in divorce was almost grotesque. Defended cases between poor persons could be tried on circuit, but not those in which the parties were not technically poor. No provision could work greater hardship upon people just beyond the limit. The true remedy was, his lordship had said, to increase the number of the judges of the King's Bench Division.

Registration of Coal Owners.

The Coal (Registration of Ownership) Act, 1937, prescribed that those interested in coal should register their titles at the Mines Department of the Board of Trade, and that if they did so before the 17th February of this year, the Board of Trade would pay the owners' costs. The Coal Bill of the present year purported to extend this date to the 1st January, 1939. Solicitors who acted for those interested in coal mines had informed the Council that the work of providing the information necessary to secure registration was often heavy, and the Council had asked the Mines Department to extend the time in case the Coal Bill did not pass before 17th February. The Department had ultimately assured the Council that when a solicitor felt that it would be impossible, because of the amount of work necessary, to lodge application before the 17th February, and would like some guidance on whether in a particular case the Department would consider that sufficient cause had been shown why no application had been made before that date, he might inform the registrar, who would then let them know the Department's attitude.

The Council had also interested themselves in the matter of compensation to agents and advisors of coal owners who would be displaced as a result of the passing of the Coal Bill. Many practising solicitors, especially in the coal areas, had set up departments in their offices to deal with mining leases. When the Bill passed, these solicitors would be deprived of this work and some of their staff would lose their occupation. The Council therefore felt that some compensation should be given and, in conjunction with the Chartered Surveyors' Institution, had made appropriate representations to the Mines Department. Notice had been given in the House on the 20th December last, that an amendment would be moved in Committee providing for the compensation of persons displaced by the Act, including solicitors.

The Council had decided not to intervene in the discussion of the Inheritance (Family Provision) Bill, because a clause submitted by them for the Bill of 1934, had been included in the new Bill. This clause provided that on any application under the Act, the court should have regard to the reasons of the testator for making his dispositions, and might accept such evidence of his reasons as it considered sufficient; and that a statutory declaration by the testator of his reasons should be *prima facie* evidence of the truth of its contents. The Bill was exceedingly controversial and the President only hoped that, in whatever form it emerged, this clause would be retained.

The Provincial Meeting at Exeter had passed two resolutions concerning solicitors' remuneration. The first had recommended that the Council should consider the desirability of establishing a general minimum scale of costs; the second, that they should consider the formulation of a practice rule that the breach of a rule or scale laid down by a Provincial Law Society should be *prima facie* evidence of professional misconduct. The meeting of the Associated Provincial Law Societies held on the 10th December, had passed a resolution urging the Societies to collaborate in order to standardise the amount and conditions of their local minimum scales of charges, and asking the Council to secure without delay the enforcement of local minimum scales of charges. The Council had been devoting much time to these resolutions and would communicate their views to the profession as soon as they possibly could.

Qualification of Justices' Clerks.

One of the matters arising from the report of the Home Office Committee on Summary Jurisdiction in the Metropolitan Area, published at the end of last July, was the qualification of clerks serving in Metropolitan police courts. The Justices' Clerks Act, 1877, s. 7, provided that clerks to magistrates should have proper legal qualifications or else have served for not less than seven years as clerks to a stipendiary magistrate or to a Metropolitan police court. Nevertheless, a person with fourteen years' experience in a lay magistrates' court could be appointed "provided there were special circumstances rendering such an appointment desirable." The President drew special attention to this proviso, because the Council felt strongly that magistrates should have the assistance of a qualified clerk. Members who considered the hundreds of statutes and the thousands of orders and regulations which came before magistrates, and the difficult questions of admissibility of evidence which arose in cases of any importance, would agree that the Council should definitely express the opinion that justice could not be done unless skilled legal advice was available to them. The Departmental Committee had proposed that lay magistrates in London should sit in the same court buildings as stipendiary magistrates and be served by the same staff. By the Act which the President quoted the existing clerks in those courts would be eligible for appointment as magistrates' clerks after seven years' service and without "special circumstances." The section did not require them, as it required clerks in the provinces, to have served seven years under a stipendiary magistrate, but only in a Metropolitan police court. In future some, if not all, of that experience might well have been gained in lay magistrates' courts. The Council was corresponding with the Home Office on this important matter, and the President expressed the strong opinion that when the time came for the findings of the Departmental Committee to be implemented the Council must press for some amendment in the law relating to the appointment of justices' clerks in London, and express some disappointment that the report of the committee made no comment on this aspect of the question. Magistrates in London needed a properly qualified clerk even more than magistrates in the provinces, for they had to deal with a mass of special and local legislation superimposed on that which applied generally throughout the country. The Council had also expressed to the Home Office the view that definite steps should be taken to recruit solicitors for the post of clerk to the magistrates of the Metropolis. He could see no justification for the theory that a civil servant, often with no professional qualifications, could in London do work which was nearly always entrusted to a solicitor in the provinces.

In conclusion, the President expressed great regret at the absence from the meeting of Sir Edmund Cook, the Society's secretary. For many years past, he said, Sir Edmund had overworked himself in the interests of the Society and its members, and he had been taken ill just after the Provincial Meeting at Exeter last December. He had not recovered as speedily as he should have done if he had regarded his personal health a little more and his work a little less. The Council had accordingly sent him away on a sea voyage, and hoped that when he returned in April he would be completely restored to health.

The Prevention of Default.

Mr. C. L. Nordon began to speak on the publicity which had been given in the daily Press to a recent grave case of default by a solicitor. The President ruled that, as Mr. Nordon had given no notice of motion and he himself had not dealt with the matter, remarks on it were out of order. He added, however, that evening meetings—called "conversaziones" for want of a better term—had been held in the Society's Hall on some Thursdays at 8 o'clock, when members had debated interesting subjects. The last debate, on Poor Persons Procedure, had been exceedingly worth while. At the end of that meeting it had been left to the President to call another meeting within two months. He proposed now to call it for Thursday, the 24th February, at 8 o'clock; and the Council had authorised him to say that they would welcome a discussion on fraudulent solicitors and the means of preventing them. He would also be authorised to put before the meeting all the means which, for years past, the Council had deliberated for stopping these terrible frauds. He assured the meeting that he would give his right hand if that would do anything towards stopping this fearful malpractice. The Council, however, was confronted with serious difficulties. He did not say that these could not be overcome by the goodwill of the profession, and he hoped for that goodwill. He therefore asked the meeting not to discuss then, in the presence of the Press, a matter which they must all have at heart, but to attend the evening meeting.

Remuneration of Barristers' Clerks.

Mr. Nordon observed that the last annual report had referred to a discussion between the Council and the General Council of the Bar on the fees of barristers' clerks. The

barrister's clerk, unlike the members of any other profession, obtained a proportion of the fee paid to his principal. Mr. Nordon suggested that this custom caused great difficulty. The barrister had nothing to do with the fixing of fees, and the gentleman who fixed the fee was interested in its amount. If the principal got no work, presumably the clerk got no reward. If the principal got a small fee, the clerk got a small reward; but if he could screw the solicitor up to a large fee, then he did very well. To give a concrete example: for a recent motion in the Chancery Division the leader's fee on Mr. Nordon's side was marked fifteen guineas. The leader on the other side, also a man of very high standing in the matter under dispute, had his brief marked twenty guineas. The learned judge had decided, on the four affidavits which had been put in, that there should be cross-examination of witnesses. The result was that the defendants, a wealthy corporation, took in a super-leader, who wanted a fee of 500 guineas. Thereupon the clerk to Mr. Nordon's leader had said that he could not possibly let his principal go into court for a fee which would be infinitesimal compared with that of the junior on the other side. The result had been that, in a cause which had started in quite a small way, Mr. Nordon's client had counsel's fees rendered amounting to £1,250; the motion had failed, and he had had to pay the costs of the other side, amounting to some £2,000.

This was one instance, Mr. Nordon declared, of a practice that was bringing litigation into disrepute. In other words, City members could not take their cases to counsel in the confidence that they would be handled at justifiable charges. The root of the trouble was that counsels' clerks were interested. Solicitors could not allow their clerks to take remuneration according to what they could get from the client, and he could not see why barristers' clerks should have this curious monopoly. It was of the essence of the solicitors' profession that they did not share their professional rewards with anyone. Barristers' clerks should be treated on the same footing. Litigants had here a real grievance: when they started litigation they had no idea what their final commitment would be.

The New Rules of Procedure.

Mr. Nordon then commented on the rapidity with which a new set of rules, replacing the New Procedure, had been sprung upon the profession at the beginning of the term. Solicitors were told that the New Procedure had been swept away; new and complicated rules were made, not as a coherent code, but by alteration and interlineation of other rules. True, two members of Council were on the rule committee, but these rules should have been circulated in draft so that those who had to administer them might have an opportunity of expressing their views on practical questions. Solicitors still lived in great uncertainty about the dates of fixing trial, close of pleadings, discovery, admissions and such other matters. They found that the lists were to be divided into complicated categories with long cases and short cases in each class. It was difficult to say which cases were long and which short without, as the Americans said, a yardstick. Such loose terms should be avoided. The late New Procedure had had many vices, and particularly that it had led to a wild and undignified scramble to push past other people in the queue.

Without going so far as Mr. Barry O'Brien in his demand for a Mussolini of the lists, Mr. Nordon declared that they needed a senior registrar who should keep track of the engagements of all the judges. The judges themselves had not full opportunity of knowing how their time might best be disposed of. Parties and their witnesses would not then be kept hanging about in the corridor waiting for their cases to come on. The judges seemed to proceed on the footing that they must not waste a moment of their time; they therefore put in the list more cases than they could dispose of so that, day after day, parties, witnesses and solicitors waited in the gloomy surroundings of the courts in complete uncertainty as to when they would have to attend. He hoped that the Council would look into this essentially practical question.

Mr. F. G. Jones drew attention to a statement that had appeared in a daily paper the previous week:—

> "Proposals will be made next Friday at a meeting of The Law Society to make it compulsory for all solicitors to insure clients against embezzlement, and have a yearly audit of their accounts."

He suggested that if the Council regarded this statement as libellous it should take appropriate steps.

The President observed that he had been a victim of press cuttings, would-be telephone messages, and all the organised propaganda which accompanied newspaper correspondence. He had taken no notice of it, and he suggested that this example also should be ignored.

Mr. M. C. Batten remarked that the Council had long pressed for withdrawal of restriction on mortgages under the Rent Acts, and asked what proposals were before it.

The President replied that an amending Bill was now before the Cabinet, and until the Council saw the new proposals it would be premature to say anything. The Council was, however, fully alive to the evils—perhaps necessary ones—which accompanied the Acts, apart from their extraordinary complexity. He regretted that the Council was powerless to bring about any change in the system by which barristers' clerks shared their masters' fees. This was not at all an ideal position, but solicitors had to make the best of it. It was embodied in rules which had originally, he supposed, been made by the Inns of Court, and the Council would be butting its head against a brick wall if it tried to get them altered at this stage. Part of the new Rules of Court had, he continued, appeared for a few hours in December, only to be hastily withdrawn. It was extraordinarily inconvenient to have the new rules published after the issue of the "Annual Practice" for the current year. On the other hand, Cicero had complained in precisely the same terms as Mr. Nordon, and it would probably never be possible to predict the length of time a case would take and whether counsel on one side or the other would prolong cross-examination or take some futile point and argue it for hours.

Mr. A. L. Bostock pleaded that a report of the evening meeting might be made available to members, but the President declared that speakers expressed their opinions, on the whole, more spontaneously if they were not reported, even for private consumption. He suggested, however, that a fuller note of the proceedings might be published in *The Law Society's Gazette*.

The meeting accorded, with acclamation, a hearty vote of thanks to the President, moved by Mr. Barry O'Brien, for his "able, kindly, patient and very firm" conduct of the meeting.

Parliamentary News.

Progress of Bills.

House of Lords.

Adelphi Estate Bill.
Read First Time. [1st February.

Blackburn Corporation Bill.
Read First Time. [1st February.

Bombay, Baroda and Central Indian Railway Bill.
Read First Time. [1st February.

Bristol Corporation Bill.
Read First Time. [1st February.

Chichester Corporation Bill.
Read First Time. [1st February.

Docking and Nicking of Horses (Prohibition) Bill.
Read Second Time. [1st February.

Dudley Extension Bill.
Read First Time. [1st February.

Electric Supply Corporation Bill.
Read First Time. [1st February.

Evidence Bill.
Read First Time. [2nd February.

Gateshead and District Tramways and Trolley Vehicles Bill.
Read First Time. [1st February.

Gateshead Corporation Bill.
Read First Time. [1st February.

Lancashire County Council (Rivers Board and General Powers) Bill.
Read First Time. [1st February.

Lee Conservancy Bill.
Read First Time. [1st February.

London County Council (General Powers) Bill.
Read First Time. [1st February.

Manchester Corporation Bill.
Read First Time. [1st February.

Middlesex County Council (General Powers) Bill.
Read First Time. [1st February.

Middlesex Hospital Bill.
Read First Time. [1st February.

Nottingham Corporation Bill.
Read First Time. [1st February.

Patents, etc. (International Conventions) Bill.
In Committee. [1st February.

Plymouth Extension Bill.
Read First Time. [1st February.

Rickmansworth and Uxbridge Valley Water Bill.
Read First Time. [1st February.

Royal Sheffield Infirmary and Hospital Bill.
Read First Time. [1st February.
St. Bartholomew's Hospital Bill.
Read First Time. [1st February.
Salford Corporation Bill.
Read First Time. [1st February.
Saltburn and Marske-by-the-Sea Urban District Council Bill.
Read First Time. [1st February.
Sheffield Gas Bill.
Read First Time. [1st February.
Shropshire, Worcestershire and Staffordshire Electric Power (Consolidation) Bill.
Read First Time. [1st February.
Stockton-on-Tees Corporation Bill.
Read First Time. [1st February.
Unemployment Insurance Bill.
Read Second Time. [1st February.
Wakefield Corporation Bill.
Read First Time. [1st February.
Warrington Corporation Water Bill.
Read First Time. [1st February.
Wear Navigation and Sunderland Dock Bill.
Read First Time. [1st February.
West Surrey Water Bill.
Read First Time. [1st February.
West Thurrock Estate Bill.
Read First Time. [1st February.
West Yorkshire Gas Distribution Bill.
Read First Time. [1st February.

House of Commons.

Aldbridge Urban District Council Bill.
Read First Time. [2nd February.
Bangor Corporation Bill.
Read First Time. [2nd February.
Blackpool Improvement Bill.
Read First Time. [2nd February.
Blind Persons Bill.
Reported with Amendments. [1st February.
Bournemouth Gas and Water Bill.
Read First Time. [2nd February.
Bradford Extension Bill.
Read First Time. [2nd February.
Brighton Corporation (Transport) Bill.
Read First Time. [2nd February.
Brixham Gas and Electricity Bill.
Read First Time. [2nd February.
Canterbury Gas and Water Bill.
Read First Time. [2nd February.
Clacton Urban District Council Bill.
Read First Time. [2nd February.
Cowes Urban District Council Bill.
Read First Time. [2nd February.
Crewe Corporation Bill.
Read First Time. [2nd February.
Derwent Valley Water Board Bill.
Read First Time. [2nd February.
Dominica Bill.
Read Second Time. [1st February.
Glamorgan County Council Bill.
Read First Time. [2nd February.
Green Belt (London and Home Counties) Bill.
Read First Time. [2nd February.
Guildford Corporation Bill.
Read First Time. [2nd February.
Housing (Financial Provisions) Bill.
Read First Time. [2nd February.
Irwell Valley Water Board Bill.
Read First Time. [2nd February.
Lee Conservancy Catchment Board Bill.
Read First Time. [2nd February.
London and North Eastern Railway Bill.
Read First Time. [2nd February.
London County Council (Tunnel and Improvements) Bill.
Read First Time. [2nd February.
London Midland and Scottish Railway Bill.
Read First Time. [2nd February.
London Passenger Transport Board Bill.
Read First Time. [2nd February.
Middlesex County Council (Sewerage) Bill.
Read First Time. [2nd February.
Ministry of Health Provisional Order (Nuneaton Extension) Bill.
Read First Time. [2nd February.
Newcastle and Gateshead Waterworks Bill.
Read First Time. [2nd February.
Ossett Corporation Bill.
Read First Time. [2nd February.
Population (Statistics) Bill.
Reported with Amendments. [1st February.
Radcliffe Farnworth and District Gas Bill.
Read First Time. [2nd February.
Redcar Corporation Bill.
Read First Time. [2nd February.
Romford Gas Bill.
Read First Time [2nd February.
Southern Railway Bill.
Read First Time. [2nd February.
Swinton and Pendlebury Corporation Bill.
Read First Time. [2nd February.
Workington Corporation Bill.
Read First Time. [2nd February.

Questions to Ministers.

SHARE-PUSHING.

Mr. BELLENGER asked the President of the Board of Trade when it is proposed to introduce the Bill to amend the Companies Acts.

THE PRESIDENT OF THE BOARD OF TRADE (Mr. Oliver Stanley): A Bill to deal with share-pushing and similar matters is in course of preparation and will be introduced as soon as possible. [1st February.

TITHE REDEMPTION.

Lieut.-Colonel CLARKE asked the Financial Secretary to the Treasury when the Tithe Redemption Commission expects to start the task of apportionment of tithe rent-charge in respect of land in the ownership of two or more owners; whether he is aware that the delay is causing very great embarrassment to large numbers of persons, since the tithe commissioners are still adopting their normal policy of collecting the whole amount due from one tenant and compelling him to recover from the others; that such a tenant can only recover at considerable expense the small sums which may be due to him; and when he expects that the task of apportionment will be commenced in Sussex.

Lieut.-Colonel COLVILLE: I would refer my hon. and gallant Friend to the reply given to him on 10th December last. The Tithe Redemption Commission hope to be in a position to commence the work of apportionment in April next, in Sussex as well as in other counties. It is intended, so far as is practicable, to deal with the most urgent cases first. Wherever there is evidence of agreement between the landowners concerned as to the proportions in which an annuity should be collected, the Commission will arrange to collect on that basis, pending formal apportionment. In some cases where there is no such agreement, it may be possible to collect on a rotation basis. A considerable period must necessarily elapse before the work of apportionment is completed, but it is hoped by the procedure contemplated to minimise difficulties arising from the legal liability of the owner of any part of a tithe area to pay the whole of a redemption annuity.

I should make it clear that ownership and not tenancy determines liability for payment. If, in any case, a demand has been made by inadvertence upon the tenant, he should communicate with the Commission's Collector from whom he received the demand, at the same time giving the name and address of the owner of the land. [1st February.

RENT RESTRICTIONS ACTS.

Mr. TOUCHE asked the Minister of Health whether he can make a statement regarding the future policy of the Government with regard to rent restriction after the expiration of the present Acts.

Sir K. WOOD: The reports of the Departmental Committee on the Rent Restrictions Acts are now engaging the attention of the Government, but I am not yet in a position to make any statement. [1st February.

CRIMINAL APPEALS.

Mr. R. ROBINSON asked the Secretary of State for the Home Department, whether he will consider, in the interests of justice, where an appeal is pending and the convicted person is detained in custody, so altering the law that sentence shall always run from the date of the original conviction.

THE UNDER-SECRETARY OF STATE FOR THE HOME DEPARTMENT (Mr. Geoffrey Lloyd): I presume that my hon. Friend has in mind cases where the appeal is to the Court of Criminal Appeal. The Criminal Appeal Act specifically provides that the time spent in custody by the appellant shall not count as part of his sentence unless the court otherwise directs, and my right hon. Friend does not think that it would be in the interests of justice to amend the law in the sense suggested.

Mr. ROBINSON: Is my hon. Friend aware that the effect of the present rule is to increase the period of detention where an appeal is unsuccessful, and that the rule is therefore in effect a clog upon the right of appeal.

Mr. LLOYD: My hon. Friend has to remember that cases coming before courts where appeals may arise to the Court of Criminal Appeal have already been judged by a judge and jury, and that the provision of the Act was designed to discourage frivolous appeals. In any case, the court has the right to direct when sentences shall begin. [2nd February.

MOTOR CAR INSURANCE.

Mr. DAY asked the Minister of Transport whether his attention has been drawn to the frequent hardships caused to members of the public through non-insured motorists being unable to pay damages awarded against them by a court order arising from an accident and/or through an insurance company repudiating liability on account of a misrepresentation on the proposal form by the assured; and whether he will consider appointing a departmental committee to advise him in what manner the present legislation can be strengthened and amended in order to safeguard the public in these circumstances.

THE MINISTER OF TRANSPORT (Mr. Burgin): The recommendations on this subject of the recent Committee on Compulsory Insurance are at present under consideration by the Departments concerned.

Mr. DAY: Will the right hon. Gentleman take into consideration that where a person has made a false statement upon an application for insurance there shall be no liability on the insurance company. [2nd February.

Rules and Orders.

THE COUNTY COURT FEES (AMENDMENT) ORDER, 1938.
DATED FEBRUARY 1, 1938.

The Lord Chancellor and the Treasury in pursuance of the powers and authorities vested in him and them respectively by section 167 of the County Courts Act, 1934*, section 2 of the Public Offices Fees Act, 1879†, and section 305 of the Companies Act, 1929‡, do hereby according as the provisions of the above-mentioned enactments respectively authorise and require him and them, make, concur in, and sanction the following Order:—

1. In this Order a fee referred to by numbe· means the fee so numbered in the County Court Fees Order, 1936§.

2. In the note to Fee No. 22, the word "deposited" shall be substituted for the word "paid."

3. In Fee No. 47 (ii) "7s. 6d." shall be substituted for "7s."

4. The following fee shall be inserted after Fee No. 72:—

72A.	On an application for the transfer of proceedings under Order 25, Rule 48. *This fee includes the certificate of the judgment or order.*	1s.

5. The following fee shall be substituted for Fee No. 89:—

Certificates and Certified Copies.

89.	For a certificate of a judgment or order or a certified copy of entries in the books of the court	1s.

6. The following fee shall be substituted for Fee No. 91:—

Dormant Funds.

91.	For keeping an account of any money or fund to which Rule 35 of the County Court Funds Rules 1934, applies .. .. *This fee is payable out of the money or fund at the end of the prescribed period of five or fifteen years, whichever is applicable, and is to be calculated on the amount of the money or, in the case of stock, on the value of the stock.*	For every £, 3d.

7. In Fee No. 94 (iii) the following words shall be added at the end of the note:—

"*and transmitted by him to the Registrar of County Court Judgments.*"

8. This Order may be cited as the County Court Fees (Amendment) Order, 1938, and the County Court Fees Order, 1936, shall have effect as amended by this Order.

Dated this 1st day of February, 1938.

Hailsham, C.

Charles Kerr.
Robert Grimston.
} Lords Commissioners of His Majesty's Treasury.

* 24 & 25 Geo. 5. c. 53. † 42 & 43 Vict. c. 58.
‡ 19 & 20 Geo. 5. c. 23. § S.R. & O. 1936 (No. 1160) I, p. 693.

Societies.

Middle Temple.

GRAND DAY:

Friday, 28th January, being the Grand Day of Hilary Term, the Treasurer of the Middle Temple (Mr. Justice Hawke) and the Masters of the Bench entertained at dinner the following guests:—The Lord Chief Justice of England (Lord Hewart, Treasurer of the Inner Temple), the Bishop of Hereford, Lord Horder, Lord Justice Clauson, Mr. Justice Charles, Mr. Justice Macnaghten (Treasurer of Lincoln's Inn), the President of the Royal College of Surgeons (Sir Cuthbert Wallace), the President of the Royal Academy (Sir William Llewellyn), Sir Percy Simmons, Sir Walter Monckton, K.C., Sir Duncan Kerly, K.C., Sir John Pakeman, the Dean of Westminster (the Very Rev. P. F. D. de Labilliere), Mr. R. Storry Deans (Treasurer of Gray's Inn), Canon J. O. Hannay, the President of St. John's College, Oxford (Dr. Cyril Norwood), Mr. R. E. Dummett, the Master of the Temple (Canon Harold Anson), Mr. G. O. Allen, Mr. Anthony Hawke, Mr. H. B. Hays, and the Reader at the Temple Church (Prebendary J. F. Clayton).

In addition to the Treasurer the following Masters of the Bench were present:—His Honour Judge Ruegg, K.C., Viscount Dunedin, Viscount Sankey, Sir Holman Gregory, K.C., Mr. St. J. G. Micklethwait, K.C., Sir Lynden Macassey, K.C., Lord Cautley, K.C., Mr. J. Bruce Williamson, His Honour Judge Dumas, Mr. W. E. Vernon, Mr. A. T. Miller, K.C., Sir Joshua Scholefield, K.C., Mr. J. D. Cassels, K.C., Sir Edward Tindal Atkinson, Mr. Walter Frampton, Mr. J. Bowen Davies, K.C., Mr. J. M. Paterson, Colonel Sir Henry F. MacGeagh, K.C., His Honour Judge Lilley, Sir Thomas Molony, His Honour Judge A. Ralph Thomas, Mr. Henry Johnston, Mr. Trevor Hunter, K.C., Mr. Wilfrid Price, Mr. H. C. Gutteridge, K.C., Mr. S. G. Turner, K.C., Mr. D. Rowland Thomas, K.C., and Mr. K. M. Macmorran, K.C., together with the Under Treasurer (Mr. T. F. Hewlett).

United Law Society.

A meeting of the United Law Society was held in the Middle Temple Common Room on Monday, 31st January, Mr. R. E. Ball in the chair. Mr. R. G. Plowman proposed: "That this house deprecates the state of affairs whereby hospitals depend upon voluntary subscriptions for their financial support." Mr. H. Everett opposed, and there also spoke Messrs. R. W. Bell, E. M. Kingston, C. F. Walker, O. T. Hill, H. W. Pritchard, T. R. Owens, A. N. Stainton, and J. H. Vine Hall, and Miss C. Colwill and Mr. Plowman replied. The motion was lost by three votes. Attendance twenty.

Legal Notes and News.

Honours and Appointments.

The India Office announces that the King has been graciously pleased to approve the appointment of Mr. ROBERT LANGDON YORKE, I.C.S., as a Judge of the Oudh Chief Court, with effect from 27th January, in the vacancy caused by the death of Mr. Justice H. G. Smith.

Mr. Justice HODSON, Mr. N. J. LASKI, K.C., and Mr. G. J. LYNSKEY, K.C., have been elected Masters of the Bench of the Inner Temple.

Mr. CORNELIUS H. O'HALLORAN, K.C., has been appointed a Judge of the British Columbian Appeal Court.

Mr. MURRAY-AYNSLEY, Chief Justice of Grenada, has been appointed a Puisne Judge of the Supreme Court of the Straits Settlements.

Mr. IRVING B. GANE has been appointed Chairman of the General Purposes Committee of the City Corporation. Mr. Gane was admitted a solicitor in 1914.

Mr. ARTHUR F. H. POUNTNEY, Assistant Solicitor to the City Corporation of Liverpool, has been appointed to a similar position with the Birmingham City Corporation. The appointment was made on 30th December last, and Mr. Pountney commences his new duties this month. He was admitted a solicitor in 1930.

Mr. PHILIP JOHNSON, M.A. Oxon, solicitor, who some years ago acquired the practice of Norris & Hancock, and has since practised in his own name at Devizes, Wilts, has been appointed Clerk of the Peace of the Borough of Devizes, consequent on the retirement of Mr. P. Delmé Radcliffe, of Devizes, who held that position for upwards of twenty-nine years. Mr. Johnson was admitted a solicitor in 1906.

Professional Announcements.

(2s. per line.)

HERBERT OPPENHEIMER, NATHAN, VANDYK & MACKAY, of 1 and 2, Finsbury Square, London, E.C.2, announce that RONALD WILLIAM GORDON MACKAY has retired from the firm as and from the 1st day of February, 1938. The remaining partners will continue to practise at the same address under the style or firm of HERBERT OPPENHEIMER, NATHAN & VANDYK. The said RONALD WILLIAM GORDON MACKAY will carry on his own practice independently at 4, Gower Street, Bedford Square, London, W.C.1.

Notes.

A meeting of the Solicitors' Managing Clerks' Association will be held on Friday, 11th February, in the Gray's Inn Hall, by kind permission of the Benchers, when Mr. Albert Crew will deliver a lecture on "The Old Bailey." The chair will be taken at 7 o'clock precisely by Sir H. Holman Gregory, K.C. The meeting ends at 8 p.m.

The annual general meeting of the shareholders of the National Provincial Bank Limited was held on 27th January at the head office, 15, Bishopsgate, London, E.C.2. Mr. Colin F. Campbell (the Chairman) announced that the turnover for the past year showing a very marked increase compared with 1936. There was a welcome increase in their chief earning asset, namely, advances, which now stood at £140,445,454. The increase was widely spread. The net profit of the year at £1,874,959 showed an increase of £104,786, and the dividend continued at 15 per cent.

BAR COUNCIL ELECTION, 1938.

The election will take place during the week ending Saturday, 12th February. Every barrister is entitled to vote at the election. Voting papers with instructions to voters are being sent to every barrister whose professional address within the United Kingdom is given in the 1937 "Law List." A barrister who has not a professional address in the 1937 "Law List" may obtain a voting paper upon his written or personal application to the offices of the Council, 5, Stone Buildings, Lincoln's Inn, W.C.2. The following candidates have been nominated: Mr. R. E. L. Vaughan Williams, K.C., Mr. J. M. Gover, K.C., The Hon. Sir Reginald Coventry, K.C., Mr. Charles Doughty, K.C., Mr. W. P. Spens, O.B.E., K.C., M.P., Mr. Lionel L. Cohen, K.C., Mr. W. C. Cleveland-Stevens, K.C., Mr. G. Justin Lynskey, K.C., Mr. Arthur Morley, O.B.E., K.C., Mr. C. Paley Scott, K.C., Mr. D. P. Maxwell Fyfe, K.C., M.P., Mr. H. St. John Field, K.C., Mr. Wilfrid M. Hunt, Mr. Cecil W. Turner, Mr. J. H. Stamp, Mr. W. D. Mathias, Mr. R. A. Willes, Mr. George F. Kingham, Mr. R. E. Gething, Mr. J. Lhind Pratt, Mr. A. W. Cockburn, Mr. A. H. Armstrong, Mrs. Helena Normanton, Mr. W. A. Macfarlane, Mr. J. Reginald Jones, Mr. R. G. Micklethwait, Mr. Gerald Thesiger, Mr. G. R. Upjohn, Mr. Graham Swanwick and Mr. E. S. Lycett Green.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP II. MR. JUSTICE CLAUSON. Witness. Part II.	MR. JUSTICE LUXMOORE. Witness. Part I.
	Mr.	Mr.	Mr.	Mr.
Feb. 7	More	Jones	*More	*Blaker
,, 8	Hicks Beach	Ritchie	*Hicks Beach	*More
,, 9	Andrews	Blaker	*Andrews	*Hicks Beach
,, 10	Jones	More	*Jones	Andrews
,, 11	Ritchie	Hicks Beach	*Ritchie	Jones
,, 12	Blaker	Andrews	Blaker	Ritchie

DATE.	GROUP II. MR. JUSTICE FARWELL. Non-Witness.	MR. JUSTICE BENNETT. Witness. Part I.	GROUP I. MR. JUSTICE CROSSMAN. Witness. Part II.	MR. JUSTICE SIMONDS. Non-Witness.
	Mr.	Mr.	Mr.	Mr.
Feb. 7	Hicks Beach	*Andrews	Jones	Ritchie
,, 8	Andrews	*Jones	Ritchie	Blaker
,, 9	Jones	*Ritchie	Blaker	More
,, 10	Ritchie	*Blaker	More	Hicks Beach
,, 11	Blaker	*More	Hicks Beach	Andrews
,, 12	More	Hicks Beach	Andrews	Jones

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 10th February 1938.

	Div. Months.	Middle Price 2 Feb. 1938.	Flat Interest Yield. £ s. d.	‡ Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	110½	3 12 5	3 5 0
Consols 2½%	JAJO	77	3 4 11	—
War Loan 3½% 1952 or after ...	JD	102¾	3 8 2	3 5 4
Funding 4% Loan 1960-90	MN	114	3 10 2	3 2 3
Funding 3% Loan 1959-69	AO	98¾	3 0 9	3 1 3
Funding 2¾% Loan 1952-57	JD	96½	2 17 0	2 19 10
Funding 2½% Loan 1956-61	AO	90½	2 15 3	3 1 8
Victory 4% Loan Av. life 22 years ...	MS	112	3 11 5	3 4 7
Conversion 5% Loan 1944-64 ...	MN	115¼	4 6 9	2 0 3
Conversion 4½% Loan 1940-44 ...	JJ	106¾	4 4 3	2 3 1
Conversion 3½% Loan 1961 or after	AO	104	3 7 4	3 5 0
Conversion 3% Loan 1948-53 ...	MS	101xd	2 19 5	2 17 8
Conversion 2½% Loan 1944-49 ...	AO	98¾	2 10 7	2 12 8
Local Loans 3% Stock 1912 or after	JAJO	89	3 7 5	—
Bank Stock	AO	348½	3 8 10	—
Guaranteed 2½% Stock (Irish Land Act) 1933 or after	JJ	80½	3 8 4	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	88½	3 7 10	—
India 4½% 1950-55	MN	113	3 19 8	3 3 7
India 3½% 1931 or after	JAJO	93½	3 14 10	—
India 3% 1948 or after	JAJO	80½	3 14 6	—
Sudan 4½% 1939-73 Av. life 27 years	FA	110	4 1 10	3 17 11
Sudan 4% 1974 Red. in part after 1950	MN	108	3 14 1	3 4 9
Tanganyika 4% Guaranteed 1951-71	FA	109	3 13 5	3 2 11
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	106	4 4 11	2 17 9
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	91	2 14 11	3 3 3
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	105	3 16 2	3 12 1
Australia (Commonw'th) 3% 1955-58	AO	90	3 6 8	3 13 9
*Canada 4% 1953-58	MS	109xd	3 13 5	3 5 4
*Natal 3% 1929-49	JJ	99	3 0 7	3 2 3
New South Wales 3½% 1930-50 ...	JJ	98	3 11 5	3 14 2
New Zealand 3% 1945	AO	97	3 1 10	3 9 10
Nigeria 4% 1963	AO	108	3 14 1	3 10 6
Queensland 3½% 1950-70	JJ	97	3 12 2	3 13 2
*South Africa 3½% 1953-73	JD	103	3 8 0	3 4 10
Victoria 3½% 1929-49	AO	99	3 10 8	3 12 1
CORPORATION STOCKS				
Birmingham 3% 1947 or after ...	JJ	87	3 9 0	—
Croydon 3% 1940-60	AO	96	3 2 6	3 5 2
*Essex County 3½% 1952-72 ...	JD	102	3 8 8	3 6 8
Leeds 3% 1927 or after	JJ	84	3 11 5	—
Liverpool 3½% Redeemable by agreement with holders or by purchase...	JAJO	101	3 9 4	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	71½xd	3 9 11	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	86xd	3 9 9	—
Manchester 3% 1941 or after ...	FA	86	3 9 9	—
Metropolitan Consd. 2½% 1920-49 ...	MJSD	97½xd	2 11 3	2 15 0
Metropolitan Water Board 3% "A" 1963-2003	AO	89¼	3 7 0	3 8 0
Do. do. 3% "B" 1934-2003 ...	MS	90xd	3 6 8	3 7 7
Do. do. 3% "E" 1953-73 ...	JJ	96	3 2 6	3 3 10
*Middlesex County Council 4% 1952-72	MN	108	3 14 1	3 6 2
* Do. do. 4½% 1950-70	MN	114	3 18 11	3 3 4
Nottingham 3% Irredeemable ...	MN	86	3 9 9	—
Sheffield Corp. 3½% 1968	JJ	102	3 8 8	3 7 10
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture ...	JJ	109½	3 13 1	—
Gt. Western Rly. 4½% Debenture ...	JJ	117½	3 16 7	—
Gt. Western Rly. 5% Debenture ...	JJ	129½	3 17 3	—
Gt. Western Rly. 5% Rent Charge ...	FA	126½	3 19 1	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	127	3 18 9	—
Gt. Western Rly. 5% Preference ...	MA	117½	4 5 1	—
Southern Rly. 4% Debenture ...	JJ	107½	3 14 5	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	106½	3 15 1	3 11 9
Southern Rly. 5% Guaranteed ...	MA	127	3 18 9	—
Southern Rly. 5% Preference ...	MA	114½	4 7 4	—

* Not available to Trustees over par.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.